

# **WAYNE COUNTY GENERAL RULES OF COURT AND PRACTICE**

*Passed By Wayne County Bar Association Effective October 30, 1997*

*NOTE: Authorization to use this Rule pending.*

## **LR89-AR00-001      CIVILITY**

The following standards are designed to encourage us, judges and lawyers alike, to meet our obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism, both of which are hallmarks of a learned profession dedicated to public service.

We expect judges and lawyers will make a mutual and firm commitment to these standards. Voluntary adherence is expected as part of a commitment by all participants to improve the administration of justice.

These standards shall not be used as a basis for litigation or for sanctions or penalties. Nothing in these standards supersedes or detracts from existing disciplinary codes or alters existing standards of conduct against which lawyer negligence may be determined.

These standards should be reviewed and followed by all judges and lawyers participating in any proceeding in the Wayne County court system. Copies may be made available to clients to reinforce our obligation to maintain and foster these standards.

### **Lawyers' Duties to Other Counsel**

1. We will practice our profession with a continuing awareness that our role is to advance the legitimate interests of our clients. In our dealings with others we will not reflect the ill feelings of our clients. We will treat all other counsel, parties, and witnesses in a civil and courteous manner, not only in court, but also in all other written and oral communications.
2. We will not, even when called upon by a client to do so, abuse or indulge in offensive conduct directed to other counsel, parties, or witnesses. We will abstain from disparaging personal remarks or acrimony toward other counsel, parties, or witnesses. We will treat adverse witnesses and parties with fair consideration.
3. We will not encourage or knowingly authorize any person under our control to engage in conduct that would be improper if we were to engage in such conduct.
4. We will not, absent good cause, attribute bad motives or improper conduct to other counsel or bring the profession into disrepute by unfounded accusations of impropriety.
5. We will not seek court sanctions without first conducting a reasonable investigation and unless fully justified by the circumstances and necessary to protect our client's lawful interests.

6. We will adhere to all express promises and to agreements with other counsel, whether oral or in writing, and will adhere in good faith to all agreements implied by the circumstances or local customs.

7. When we reach an oral understanding on a proposed agreement or a stipulation and decide to commit it to writing, the drafter will endeavor in good faith to state the oral understanding accurately and completely. The drafter will provide the opportunity for review of the writing to other counsel. As drafts are exchanged between or among counsel, changes from prior drafts will be identified in the draft or otherwise explicitly brought to the attention of other counsel. We will not include in a draft matters to which there has been no agreement without explicitly advising other counsel in writing of the addition.

8. We will endeavor to confer early with other counsel to assess settlement possibilities. We will not falsely hold out the possibility of settlement as a means to adjourn discovery or to delay trial.

9. In civil actions, we will stipulate to relevant matters if they are undisputed and if no good faith advocacy basis exists for not stipulating.

10. We will not use any form of discovery or discovery scheduling as a means of harassment.

11. We will make good faith efforts to resolve by agreement our objections to matters contained in pleadings and discovery requests and objections.

12. We will not time the filing or service of motions or pleadings in any way that unfairly limits another party's opportunity to respond.

13. We will not request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.

14. We will consult other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts

15. We will endeavor to accommodate previously scheduled dates for hearings, depositions, meetings, conferences, vacations, seminars, or other functions that produce good faith calendar conflicts on the part of other counsel. If we have been given an accommodation because of a calendar conflict, we will notify those who have accommodated us as soon as the conflict has been removed.

16. We will notify other counsel and, if appropriate, the court or other persons, at the earliest possible time when hearings, depositions, meetings, or conferences are to be canceled or postponed. Early notice avoids unnecessary travel and expense of counsel and may enable the court to use the previously reserved time for other matters.

17. We will agree to reasonable requests for extension of time and for waiver of procedural formalities, provided our clients' legitimate rights will not be materially or adversely affected.

18. We will not cause any default or dismissal to be entered without first notifying opposing counsel, when we know his or her identity.

19. We will take depositions only when actually needed to ascertain facts or information or to perpetuate testimony. We will not take depositions for the purposes of harassment or to increase litigation expenses.

20. We will not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.

21. We will not obstruct questioning during a deposition or object to deposition questions unless necessary under the applicable rules to preserve an objection or privilege for resolution by the court.

22. During depositions we will ask only those questions we reasonably believe are necessary for the prosecution or defense of an action.

23. We will carefully craft document production requests so they are limited to those documents we reasonably believe are necessary for the prosecution or defense of an action. We will not design production requests to place an undue burden or expense on a party.

24. We will respond to document requests reasonably and not strain to interpret the request in an artificially restrictive manner to avoid disclosure of relevant and nonprivileged documents. We will not produce documents in a manner designed to hide or obscure the existence of particular documents.

25. We will carefully craft interrogatories so they are limited to those matters we reasonably believe are necessary for the prosecution or defense of an action, and we will not design them to place an undue burden or expense on a party.

26. We will respond to interrogatories reasonably and will not strain to interpret them in an artificially restrictive manner to avoid disclosure of relevant and non-privileged information.

27. We will base our discovery objections on a good faith belief in their merit and will not object solely for the purpose of withholding or delaying the disclosure of relevant information.

28. When a draft order is to be prepared by counsel to reflect a court ruling, we will draft an order that accurately and completely reflects the court's ruling. We will promptly prepare and submit a proposed order to other counsel and attempt to reconcile any differences before the draft order is presented to the court.

29. We will not ascribe a position to another counsel that counsel has not taken or otherwise seek to create an unjustified inference based on counsel's statements or conduct.

30. Unless specifically permitted or invited by the court, we will not send copies of correspondence between counsel to the court.

### **Lawyers' Duties to the Court**

1. We will speak and write civilly and respectfully in all communications with the court.
2. We will be punctual and prepared for all court appearances so that all hearings, conferences, and trials may commence on time; if delayed, we will notify the court and counsel, if possible.
3. We will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice.
4. We will not engage in any conduct that brings disorder or disruption to the courtroom. We will advise our clients and witnesses appearing in court of the proper conduct expected and required there and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.
5. We will not knowingly misrepresent, mischaracterize, misquote, or miscite facts or authorities in any oral or written communication to the court.
6. We will not write letters to the court in connection with a pending action, unless invited or permitted by the court.
7. Before dates for hearings or trials are set, or if that is not feasible, immediately after such date has been set, we will attempt to verify the availability of necessary participants and witnesses so we can promptly notify the court of any likely problems.
8. We will act and speak civilly to court clerks, court reporters, and secretaries, with an awareness that they, too, are an integral part of the judicial system.

### **Courts' Duties to Lawyers**

1. We will be courteous, respectful, and civil to lawyers, parties, and witnesses. We will maintain control of the proceedings, recognizing that judges have both the obligation and the authority to insure that all litigation proceedings are conducted in a civil manner.
2. We will not employ hostile, demeaning, or humiliating words in opinions or in written or oral commendations with lawyers, parties, or witnesses.
3. We will be punctual in convening all hearings, meetings, and conferences; if delayed, we will notify counsel, if possible.

4. In scheduling all hearings, meetings and conferences we will be considerate of time schedules of lawyers, parties, and witnesses.
5. We will make all reasonable efforts to decide promptly all matters presented to us for decision.
6. We will give the issues in controversy deliberate, impartial, and studied analysis and consideration.
7. While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice.
8. We recognize that a lawyer has a right and a duty to present a cause fully and properly, and that a litigant has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments and to make a complete and accurate record.
9. We will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which a lawyer represents.
10. We will do our best to insure that court personnel act civilly toward lawyers, parties, and witnesses.
11. We will not adopt procedures that needlessly increase litigation expense. 12. We will bring to lawyers' attention uncivil conduct, which we observe.

#### **LR89-AR00-002      COURT HOURS**

The working hours of the Wayne Circuit and Superior Courts shall be Monday through Friday of each week from 8:30 o'clock A.M. until 4:30 o'clock P.M., except on holidays and those occasions when a Judge is absent due to official business, matters relating to his or her office, illness, personal matters, or vacation. Hours may be extended by the Judge for trials or for other circumstances as the Judge may deem appropriate.

#### **LR89-AR00-003      SCHEDULING OFFICE**

1. General Provisions. The Court Scheduling Office of the Wayne Circuit and Superior Courts shall establish, manage and coordinate the calendars of the Wayne Circuit, Superior Court No. 1, and Superior Court No. 2.. The following general provisions shall apply to this Rule:

- a. "Court" shall include the Wayne Circuit Court, Wayne Superior Court No. 1, and Wayne Superior Court No. 2..
- b. "Trial Readiness Certificate" shall hereinafter be referred to as "TRC".

c. All matters shall be set by the Scheduling Office in consultation with the Judge of the Court and, where possible, counsel involved in such matter, except as otherwise provided herein.

d. “Good cause” as used herein shall require a finding of same by the Court.

## 2. Scheduling.

a. A case shall always be set for the next step, or re-set for the same step in the processing of said case toward disposition.

b. Matters shall be generally scheduled during the working hours of the Courts as set forth in Rule 2 of the General Rules Of Court.

c. Non-contested dissolution of marriage cases, contempt citations, and provisional domestic hearings shall be set primarily on Friday mornings, but said matters may also be set on other dates at the discretion of the Judge if time is available.

d. Cases venued to Wayne County from another county or where one of the Judges from Wayne County has been appointed as a Special Judge on a matter pending in another county shall be integrated into the trial setting procedure at the place where such cases had progressed upon docketing in Wayne County.

g. A case set for trial in a second or subsequent position shall be prepared to go to trial with advance notice of seven (7) days. A party may be relieved of this requirement upon prompt application showing good cause.

e. Cases shall be set for trial at the earliest possible date after compliance with the Rule regarding the filing of Trial Readiness Certificates.

f. Counsel in a case set for trial may agree with counsel in any other case set for trial in the same position (1st place setting, 2nd place setting, etc.) to exchange trial dates upon approval by the Court.

h. In the event that any case involves special problems arising out of emergency or other circumstances, which a party determines to require a decision of the Court as to scheduling, an application showing good cause may be filed.

## 3. Pre-Trial.

a. A case shall be set for pre-trial conference approximately one (1) month before the trial date. Counsel shall meet at a pre-pre-trial conference and proceed in accordance with Trial Rule 16 of the Indiana Rules of Procedure.

## **LR89-AR00-004      LAW LIBRARY**

A. The Courthouse Law Library will be open during regular Courthouse hours. Attorneys desiring to use it at night or on weekends may make pre—arrangements to be admitted to the Courthouse through the Courthouse Maintenance Department.

B. The Courthouse Law Library will be locked at all times. A key may be obtained by members of the Wayne County Bar Association. Other persons not having keys may gain access to the Library through any of the Court Bailiffs during regular courthouse hours.

C. No books may be removed from the Library at any time, except as follows:

1. By the Judges. Any Judge removing a book shall insert in that space his color—coded card to indicate the location of the book. The colors are: Circuit Court -Red; Superior Court No. 1 - Green; Wayne Superior Court No. 2 — Black.

2. By the Prosecutor or full-time Deputy Prosecutors on a 24 hour basis, to be checked out through the Circuit Court Bailiff and not to be removed from the Courthouse.

3. By others for the purpose of copying in the Scheduling Office as hereafter set out.

D. Photocopies may be made in the Scheduling Office at a per page charge as prescribed by the Judges. Photocopies shall be paid for at the time they are made.

E. Books shall be returned to the appropriate shelves by the person using the books., prior to leaving the Library.

## **LR89-AR00-005 PHOTOGRAPHS, BROADCASTING, TELEVISIONING AND RECORDING PROHIBITED**

The Wayne Circuit and Superior Courts hereby specifically adopt CANON 3-B(13) OF THE INDIANA CODE OF JUDICIAL CONDUCT, ADOPTED BY THE SUPREME COURT OF INDIANA PROVIDES AS FOLLOWS:

“13) A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judgment may authorize:

(A) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(B) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(C) the photographic or electronic recording and production of appropriate court proceedings under the following conditions:

- (1) the means of recording will not distract participants or impair the dignity of the proceedings;
- (2) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;
- (3) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and,
- (4) the reproduction will be exhibited only for instructional purposes in educational institutions.

In compliance with this rule, broadcasting, televising, recording and the taking of photographs are prohibited in these areas of each court:

Courtroom  
Office of the Judge's Staff  
Judge's Chambers  
Witness waiting area

The third floor hallways (other than the witness areas) are not included as prohibited areas.

On a limited basis photographs may be taken through the glass at the rear of the Circuit and Superior Courtrooms when the court is not in session and neither the judge nor the jury is present in the courtroom."

#### **LR89-AR00-006      PROTECTIVE ORDERS and CIVIL PLENARY MATTERS**

All requests for protective orders (denominated as "P0" for filing purposes) and civil plenary matters (denominated as "CP" for filing purposes) shall be filed in the Wayne Circuit, Wayne Superior No. 1, or Wayne Superior No. 2 courts. The Clerk of Wayne Superior Court No. 3 shall not accept "P0" or "CP" filings.

#### **LR89-AR00-007      WAYNE-UNION COUNTY CASELOAD EQUALIZATION PLAN**

The Honorable James R. Williams , Judge of Union Circuit Court, is assigned to sit as Judge on cases filed in the Wayne Circuit, Superior No. 1, Superior No. 2, and Superior No. 3 courts in order to attempt to equalize the caseloads among the courts in Wayne and Union counties. Judge Williams shall be available approximately one (1) day per week to preside in those cases assigned to him within such courts.

In furtherance of the goal of caseload equalization, Judge Williams will be placed in the Wayne County random computer case-filing system as to all civil plenary (CP), civil tort (CT),



miscellaneous (MI), domestic relations (DR), guardianship (GU), and estate (ES) causes filed in the Wayne County Court system.

Judge Williams will be assigned cases on a pre-determined allotment among those types of cases set forth above in order that the caseloads, as assigned by type of cause, among the courts within Wayne and Union counties are as close to equal as possible. The weighted caseload study will be utilized in determining the exact number and type of cases over which Judge Williams will preside.

In order to further promote the goal of equalization, Judge William C. Hoelscher, Judge of the Wayne Superior Court No. 3, is immediately withdrawn from the panel of Special Judges listed in Rule 16 of the Wayne County Rules Of Civil Procedure. By eliminating Judge Hoelscher from such panel, it is intended that he will not be assigned additional cases. Further, Rule 6 of the Wayne County General Rules Of Court And Practice is being added to provide that the Clerk of Wayne Superior Court No. 3 shall no longer accept for filing requests for protective orders or civil plenary matters. This, too, shall assist in reducing the caseload being handled by Judge Hoelscher. Finally, all driving while intoxicated and related matters and all juvenile matters will continue to be filed in Wayne Superior Court No. 3 where Judge Hoelscher presides. This will, likewise, assist in the equalization process from a time perspective in that Superior Court No. 3 is a specialized court allowing Judge Hoelscher to gain an expertise in certain areas that reduces the actual time required on those certain cases.

As set forth in the District Nine Plan, the Judges of the Wayne and Union counties shall meet every six (6) months to review this Rule and to make any adjustments that may be necessary to better accomplish equalization.

# **WAYNE COUNTY RULES OF CIVIL PROCEDURE**

Passed By Wayne County Bar Association Effective October 30, 1997

## **LR89-TR00-001 SCOPE AND CITATION**

These rules shall govern the procedure and practice of civil cases in the Wayne Circuit and Superior Courts unless otherwise provided by law or rules of the Supreme Court of Indiana. These rules shall be cited as LCvR

## **LR89-TR00-002 APPEARANCE BY ATTORNEY**

### **A. Initiating Party.**

At the time an action is commenced, an attorney representing the initiating party must: be a member in good standing of the Board of the State of Indiana; and file with the Clerk of the Court a Written Appearance form setting forth the following information:

1. Name of the initiating party or parties to the proceeding;
2. Name, address, attorney number, telephone number, FAX number, and computer address of any attorney representing the initiating party, as applicable;
3. The case type of the proceeding [Administrative Rule 8(B) (3)];
4. A statement that the party will or will not accept service by FAX;
5. In domestic relations, Uniform Reciprocal Enforcement of Support (UREA), paternity, delinquency, Child in Need of Services (CHINS), guardianship, and any other proceedings in which support may be an issue, the Social Security Identification Number of all family members;
6. The caption and case number of all related cases; and,
7. Such additional matters specified by state rules required to maintain the information management system employed by the court.

### **B. Responding Party.**

At the time the responding party or parties first appear in a case, if that party or parties are represented by an attorney, the attorney must:

be a member in good standing of the Bar of the State of Indiana; and file with the Clerk of the Court a Written Appearance form setting forth the following information:

1. Name of the party or parties responding;
2. Name, address, attorney number, telephone number, FAX number, and computer address of the attorney representing the responding party or parties, as applicable;
3. The case number previously assigned to the proceeding;
4. A statement that the responding party or parties will or will not accept service by FAX; and,
5. Such additional matters specified by state rules required to maintain the information management system employed by the Court.

C. Intervening Party.

At the time the first matter is submitted to the Court seeking to intervene in a proceeding, if such intervening party or parties are represented by an attorney, that attorney must: be a member in good standing of the Board of the State of Indiana; and file with the Clerk of the Court an appearance form setting forth the following information:

1. Name of the party or parties responding;
  2. Name, address, attorney number, telephone number, FAX number, and computer address of the attorney representing the responding party or parties, as applicable;
  3. The case number previously assigned to the proceeding;
  4. A statement that the responding party or parties will or will not accept service by FAX; and,
  5. Such additional matters specified by state rules required to maintain the information management system employed by the Court.
- D. Public Notice of Identifying Information~

Information relating to the parties set forth in this rule may be filed under seal of the court as warranted by the circumstances presented in a particular case.

E. Completion and Correction of Information.

In the event matters must be filed before the information required by this rule is available, the Appearance form shall be submitted with available information and supplemented when the absent information is acquired. Parties shall promptly advise the Clerk of the Court of any change in the information previously supplied to the Court.

F. Service.

The Clerk of the Court shall use the information set forth in the Appearance form for service by mail under Trial Rule 5(B) (2)

G. Pro Hac Vice.

A person not a member of the Bar of the State of Indiana shall not generally be permitted to practice in the Civil Division of the Wayne County Court System. The Court in its discretion may permit such counsel to appear only for a specifically limited purpose and time. Counsel's Motion shall strictly comply with Admission and Discipline Rule 3, and disclose such purpose, time, and all other cases in which the attorney or members of the firm have been permitted to appear in the State of Indiana.

H. Non-resident Attorney.

Whenever in its discretion the Court believes it would facilitate the conduct of litigation, the Court may require any attorney who is a member of the Bar of Indiana and who does not maintain an office in Indiana, to retain as local counsel a member of the Bar of Indiana who maintains a local office in Indiana. Notice served upon such local counsel shall constitute service upon all other counsel appearing of record for such party.

**LR89-TR00-003 WITHDRAWAL OF APPEARANCE**

All withdrawals of Appearance shall be in writing and by leave of court. Permission to withdraw shall be given only after the withdrawing attorney has given his or her client ten (10) days written notice of his or her intention to withdraw and has filed a copy of such with the court or upon a simultaneous entering of Appearance by new counsel for said client. The letter of withdrawal shall explain to the client that failure to secure new counsel may result in dismissal of the client's case or a default judgment may be entered against him, whichever is appropriate, and other pertinent information such as a pending trial setting date or any other hearing date. Such letter of withdrawal shall be sent to the client via both certified mail -return receipt requested and first class mail, postage pre—paid. The certificate of service attached to the required motion for leave to withdraw must indicate compliance with both forms of mail to the client and to all counsel of record or the request shall be denied. The court will not grant a request for withdrawal of appearance unless the same has been filed with the court at least ten (10) days prior to the trial date, except for good cause shown.

**LR89-TR00-004 FILING**

A. Filing and Submission Only to the Clerk; Proof of Service; Sanctions.

All papers presented for filing shall be submitted to the Clerk and not to the court. All pleadings, motions and other papers submitted for filing which are required to be served under Trial Rule 5(A) shall be filed no later than three (3) days after service and shall contain proof of service pursuant to Trial Rule 5(B) (2). If such papers are filed before service, proof of service thereof shall be filed no later than three (3) business days thereafter. Upon failure to comply with this rule, the court may, on motion of any party or on its own motion, impose appropriate sanctions.

B. Separate Motions and Order; Order by Chronological Case Summary Entry Form; Service.

Proposed orders shall be prepared and filed separately from the pleadings, petitions, motion or other papers to which they have reference.

Orders, either routine in nature or uncontested including, for example, those setting or continuing a hearing, shall be effected by the chronological case summary entry only, which shall contain the concise substance of the order.

All orders shall be accompanied with sufficient copies so that copies may be mailed to all parties.

C. Facsimile.

Facsimile filing is permitting in the Wayne Circuit and Wayne Superior Courts provided such filing is in accordance with the procedure contemplated by Indiana Administrative Rule 12. If the filing requires immediate attention of the Judge, it shall be so indicated in bold letters in an accompanying transmittal memorandum. Facsimile filing must be through the Clerk's central reception number (765— 973-9250) . Legibility of documents and timeliness of filing is the responsibility of the sender.

Any documents filed by facsimile which seek an Order of Court must be accompanied by a copy of a proposed order. Such proposed order must contain the requesting party or attorney's facsimile number in the distribution list. If the Court adopts the proposed order and certifies that an emergency exists, the Clerk shall return such Order to sender by facsimile. Upon receipt of the Court's Order, sender shall serve it upon all parties or counsel of record by facsimile or First Class U.S. Mail and file an acknowledgment of receipt and Certificate of Service via facsimile to the Clerk's central reception number on the form below:

Cause No.

Acknowledgment and Certificate of Service:

I acknowledge receipt of the following order or request from the Court:

\_\_\_\_\_ and certify that I have served a copy of the Court's Order or request upon the following parties or counsel of record: \_\_\_\_\_ via: \_\_\_\_\_ facsimile transmission; First Class, U.S. Mail

Firm Name

Attorney's Name, Address & Telephone Attorney's Number

#### D. Counsel to Furnish Pleadings to Special Judge.

When a Special Judge who is not a Wayne County Judge is selected and qualifies in a case, copies of all filings subsequent to the qualification of such Special Judge shall be delivered in person, by mail, or by facsimile to the office of the Special Judge with certificate of forwarding same made a part of the filing.

#### E. Discovery Filings.

Except as may be filed simultaneously with the initial pleading (i.e., Complaint, Petition for Dissolution of Marriage, Petition for Modification), no deposition or request for discovery or response thereto under Trial Rules 30, 31, 33, 34, or 36 shall be filed with the Clerk's Office or Court unless:

- a. A motion is filed pursuant, to T.R. 26(C) or 37 and the original deposition or request for discovery or response thereto is necessary to enable the Court to rule; or
- b. A party desires to use the deposition or request for discovery or response thereto for evidentiary purposes at trial or in connection with a motion, and the Court, either upon its own motion or that of any party, or as a part of any pre-trial order, orders the filing of the

### **LR89-TR00-005 MOTIONS**

#### A. Briefs.

All motions filed pursuant to Trial Rules 12 and 56 shall be accompanied by a separate supporting Brief. Whenever Briefs are required or requested in a case, an adverse party shall have thirty (30) days after service the initial Brief or Motion in which to serve and file an answer Brief, and the moving party shall have ten (10) days after service of the answer Brief in which to serve and file a reply brief, unless a longer or shorter time is ordered by the Court. Each motion shall be separate, while alternative motions filed together shall each be identified on the caption. Failure to file an answer Brief or reply Brief within the time prescribed may be deemed a waiver of the right thereto and may subject the motion to summary ruling.

#### B. Oral Arguments.

The granting of a motion for oral argument, unless required by the Indiana Rules of Procedure, shall be wholly discretionary with the Court.

### C. Service on Opposing Party.

In all cases where any pleading or other document is required to be served upon opposing counsel, proof of such service may be made either by:

1. A certificate of service signed by counsel of record for the serving party and the certificate shall specify by name and address all counsel upon whom the pleading or documents was served; or
2. An acknowledgment of service signed by the party served or counsel of record.

## **LR89-TR00-006 INTERROGATORIES**

### A. Number limited.

Interrogatories shall be tailored specifically to the cause in which they are served and numbered consecutively to facilitate response. Interrogatories shall be limited to a total of twenty-five (25) including sub—parts and shall be used solely for the purpose of discovery and shall not be used as a substitute for the taking of a deposition. For good cause shown and upon leave of court, additional interrogatories may be propounded.

### B. Answers and objections.

Answers or objections to interrogatories under Trial Rule 31 or 33 of the Indiana Rules of Procedure shall set forth in full the interrogatories being answered or objected to immediately preceding the answer or objection.

### C. Duplicated forms.

No duplicated forms containing interrogatories shall be filed or served upon a party unless all interrogatories on such forms are consecutively numbered and applicable to the cause in which the same are filed and served.

## **LR89-TR00-007 DEPOSITIONS AND VIDEO TAPED DEPOSITIONS**

All video taped depositions filed with the court shall be accompanied by a transcript of the testimony.

All depositions filed with the Wayne County Clerk in any civil cause shall be destroyed by the Clerk without being microfilmed or otherwise reproduced two (2) years after termination of the cause by dismissal or final judgment. The party who filed the deposition may obtain the same from the Clerk by making written request from the Clerk for the same within two (2) months before the expiration of the two (2) years. Any party may file written motion with the Court, with notice to opposing counsel, requesting an order releasing the deposition within twenty-two (22) months from termination of the cause.

## **LR89-TR00-008 CONTINUANCES AND ENLARGEMENTS OF TIME**

### **A. Motion.**

All Motions for Continuance or enlargement of time (whether ~ 2~, 3~, etc.), shall be made in writing, shall state whether opposing counsel objects to the motion, and shall state whether prior continuances have been requested by either party and whether or not such request was granted. The Court may require any written Motion for Continuance to be signed by the party requesting the continuance.

### **B. First Enlargement of Time.**

The first Motion for Enlargement of Time to file a responsive pleading to a Complaint filed by a party shall be granted summarily for up to forty-five (45) days. Any request for additional time beyond forty-five (45) days or a subsequent request for enlargement of time shall be at the discretion of the Court.

### **C. Title of Motion.**

A Motion for Continuance or Motion for Enlargement of Time, whether it is plaintiff's or defendant's motion, shall denominate whether it is the First (1st), Second (2nd), Third (3rd), etc. Motion for Continuance or Motion for Enlargement of Time by Plaintiff or Defendant, i.e., Plaintiff's Second Motion for Enlargement of Time.

## **LR89-TR00-009 TRIAL READINESS CERTIFICATE (TRC)**

### **A. TRC.**

Any party may request the scheduling of a trial by filing a Trial Readiness Certificate (TRC) that certifies that the cause is ready to be scheduled for trial and that no continuance of any trial date so scheduled will be requested for the purpose of filing any pleading or motion, pursuing further discovery proceedings, securing attendance of any witness or party, or for any reason now reasonably foreseeable.

### **B. Request of Response.**

A party filing a Trial Readiness Certificate may request that the other party file a Trial Readiness Certificate within thirty (30) days. Such request shall be made on the Trial Readiness Certificate. The party requested to file a TRC within thirty (30) days shall file a TRC within such time unless within such thirty (30) day period an application for enlargement of time showing good cause is filed.



C. Failure to Timely Respond.

In the event a party requested to file a TRC within thirty (30) days fails to timely file a TRC or a motion for enlargement of time within which to file a TRC, the court may summarily proceed to schedule a pre-trial and trial date with or without a praecipe being filed by the requesting party.

D. Form

Trial Readiness Certificates (TRC's) shall be in the form set forth in Appendix "A". TRC's not in such form may be summarily denied. Trial Readiness Certificates may be obtained from the Wayne County Clerk's Office.

**LR89-TR00-010 PRE - TRIAL PROCEDURE**

A. Setting of Pre-Trial Conference.

A case shall be set for a pre—trial conference approximately one (1) month prior to the trial date.

B. Filing of Pre-Trial Statements.

At least two (2) days prior to the pre—trial conference, counsel for each party shall file Pre-Trial Statements which shall include all matters deemed important to the trial of the cause, but must include all information set forth in Paragraph "C" below.

C. Form of Pre—Trial Statement.

The pre—trial statement shall contain the following statements in separate numbered Paragraphs as follows:

1. JURISDICTION. Setting forth the basis of jurisdiction.
2. STATUS OF RECORD. Setting forth the pleadings raising the issues.
3. PENDING MOTIONS AND OUTSTANDING DISCOVERY. Setting forth the motions or other matters requiring action by the Court and a concise statement as to the status of discovery.
4. STATEMENT OF POSITION. Setting forth a concise statement as to each party's position.
5. STIPULATIONS. Setting forth a concise statement of stipulated facts.
6. ISSUES OF FACT. Setting forth a statement of the issues of fact which remain to be litigated at trial.
7. LSSUES OF LAW. Setting forth a concise statement of the issues of law on which there is agreement and which remain to be litigated at trial.
8. EXHIBITS. Setting forth each exhibit which shall be presented at trial.
9. AMENDMENTS TO PLEADINGS. Setting forth a concise statement as to whether or not there are any amendments to the pleadings.

10. PROBABLE SETTLEMENT. Setting forth a concise statement as to settlement negotiations and the likelihood of settlement.

11. PROBABLE TRIAL TIME. Setting forth a concise statement as to the anticipated length of trial.

12. LIST OF WITNESSES. Setting forth a numbered list of trial witnesses, which shall include each witness's address. Expert witnesses shall be so designated.

D. Failure to file Pre-Trial Statement.

In the event either party should fail to timely file a Pre-Trial Statement as required by this Rule, the Court shall have the right to cancel the pre-trial conference or to enter appropriate sanctions against the party failing to file such Pre-Trial Statement.

E. Pre—Trial Order.

Following the pre-trial conference, a pre-trial order shall be entered which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered which limits the issues for trial to those not disposed of by admissions or agreement of counsel, and such order when entered shall control the subsequent course of action, unless modified thereafter to prevent manifest injustice.

F. More than one Pre-Trial Conference,

If necessary or advisable, the Court may adjourn the pretrial conference from time to time or may order an additional Pre-Trial Conference.

**LR89-TR00-011 CASE MANAGEMENT CONFERENCE**

A. Mandatory Case Management Conference.

A case management conference shall be required in all personal injury and medical malpractice actions.

B. Discretionary Case Management Conference.

A case management conference may be ordered upon the filing of a motion by any party or on the court's own motion.

C. Conference procedure.

Within one hundred twenty (120) days of the filing of a Complaint in those cases where a case management conference is mandatory, or within thirty (30) days after otherwise being ordered to participate in a case management conference, the Plaintiff shall arrange a meeting of all parties for the following purposes:

1. List of Witnesses. Exchange lists of witnesses known to have knowledge of the facts supporting the pleadings. The parties shall thereafter be under a continuing obligation to advise opposing parties of other witnesses as they become known.

2. Documents. Exchange all documents which are contemplated to be used in support of the pleadings. Documents later shown to have been reasonably available to a party and not exchanged may be subject to exclusion at the time of trial.

3. Other Evidence. Exchange any other evidence reasonably available to obviate the filing of unnecessary discovery motions.

4. Settlement. Discuss settlement of the action.

5. Discovery Schedule. Agree upon a preliminary schedule for all discovery.

6. Complicated Case. Discuss whether the action is sufficiently complicated so that additional conferences may be required.

#### D. Case Management Order.

Within ten (10) days after meeting, those attending are to file a joint Case Management Order setting forth:

1. The likelihood of mediation and settlement;
2. A detailed schedule of discovery for each party;
3. A limitation on the time to join additional parties and to amend the pleadings;
4. A limitation on the time to file all pre-trial motions;
5. Any other matters which the parties want to address; and;
6. A preliminary estimate of the time required for trial.

### **LR89-TR00-012 JURY INSTRUCTIONS**

#### A. Proposed Jury Instructions.

Not less than seven (7) days prior to trial or longer as the Court may order, counsel shall submit proposed jury instructions to the Court, with copies to all other counsel. If proposed jury instructions are sent to the Court pursuant to Trial Rule 5(E), copies of such proposed instructions shall also be sent to the Court that same day before 4:30 o'clock P.M. via facsimile transmission (Telephone: 765-973—9250). Instructions covering matters occurring at the trial which could not reasonable be anticipated may be substituted at the conclusion of the testimony. Each instruction shall be accompanied by citations of authority.

#### B. Objections to Proposed Jury Instructions.

Written objections to proposed jury instructions shall be submitted to the Court on or before the first day of trial. Written objections shall be numbered and shall specify distinctly the objectionable matter in the proposed instruction. Each objection shall be accompanied by citations of authority.

### **LR89-TR00-013 MOTIONS TO COMPEL DISCOVERY**

To avoid undue delay in the administration of justice, the Court shall refuse to rule on any and all motions for discovery and the production of documents under Trial Rules 27 through 37, unless moving counsel shall advise the Court in writing and within the motion to compel discovery that, after personal consultation with opposing counsel or the opposing party as the case may be, and good faith attempts to resolve differences, the parties are unable to reach an accord regarding their discovery differences. This statement shall recite the date, time and place of such conferences and the names of all persons participating therein and shall be verified.

If counsel for a party advises the Court in writing that opposing counsel has refused or delayed such meeting, then the Court may take such action as is appropriate to avoid further delay.

All motions to compel discovery shall attach thereto a copy of the original interrogatory, request, admission or other discovery request about which the motion to compel is directed.

### **LR89-TR00-014 CUSTODY AND DISPOSITION OF MODELS AND EXHIBITS**

#### A. Custody.

After being marked for identification, models, diagrams, exhibits and material offered or admitted in evidence in any cause pending or tried before the Court shall be placed in the custody of the Court Reporter unless otherwise ordered by the Court.

#### B. Removal.

All models, diagrams, exhibits or material placed in the custody of the Court Reporter shall be taken away by the parties offering them in evidence, except as otherwise ordered by the Court, within four (4) months after the final disposition of the case unless an appeal is taken. In all cases in which an appeal is taken, they shall be taken away within ninety (90) days after the final disposition of the appeal. At the time of removal, a detailed receipt shall be given to the Court Reporter and filed in the cause. Upon failure of such items to be removed in accordance with this rule, the Court may order the same destroyed or otherwise disposed of in a reasonable manner.

## **LR89-TR00-015 RANDOM FILING OF CIVIL CASES**

Certain civil filings in Wayne Circuit, Wayne Superior Court No. 1 and Wayne Superior Court No. 2 shall be assigned to said courts by way of a computer generated random selection process. The following civil actions shall be subject to this Rule, to-wit:

Civil Torts

Civil Plenary Protective Orders Domestic Relations Guardianships Estates

Adoptions Trusts

Mental Health

Civil Miscellaneous, except cases filed by the Prosecuting Attorney's Office.

Reciprocal Support, except where the support sought relates to matters previously addressed in an existing dissolution of marriage or paternity decree. In this situation, the Reciprocal shall be filed in the court, which has the existing order or decree.

Paternity filings shall be exempt from the random selection process.

Captions of all proposed initial pleadings shall contain blank spaces where appropriate to enable the Clerk to enter the identity of the receiving court and its cause number.

The judges of said courts shall periodically review the filing pattern and reserve the right to transfer cases in the event of a disproportionate distribution of cases in order to expedite dispositions of all pending cases.

## **LR89-TR00-016 SPECIAL JUDGE SELECTION IN CIVIL CASES**

In the event a special judge selected pursuant to Rule 79(D), (E), or (F) does not accept the case, a special judge shall be designated by the Clerk of the Wayne Circuit Court in sequence from the following list of judges, to—wit:

1. P. Thomas Snow, Judge, Wayne Superior Court No. 1
2. Douglas VanNiddlesworth, Judge, Wayne Circuit Court
3. Steven J. Cox, Judge, Franklin Circuit Court
4. Barbara Arnold Harcourt, Judge, Rush Circuit Court
6. David Northam, Judge, Rush County Court
7. James Williams, Judge, Union Circuit Court
8. Frank W. Messer, Jr., Judge, Fayette Superior Court
9. Daniel Lee Pflum, Judge, Fayette Circuit Court
10. Gregory A. Horn, Judge, Wayne Superior Court No. 2

The Clerk shall maintain such records as necessary to assure that selections are rotated in the above sequence.

In the event a judge ceases to serve as judge, the Clerk shall substitute the name of his or her successor in the above rotation.

## **LR89-TR00-017 ATTORNEYS FEES IN CIVIL CASES**

RULE 1.5 of the Rules of Professional Conduct adopted by the Supreme Court of Indiana shall govern the awarding of attorneys fees I civil actions. All fees charged by attorneys must be reasonable. Factors which the Wayne Circuit and Superior Courts will consider in determining attorney fee awards in civil cases include:

1. The time and labor required, the novelty and difficulty of questions involved, and the skill requisite to perform the legal service properly;
2. The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
3. The fee customarily charged in the locality for similar legal service;
4. The amount involved and the results obtained;
5. The time limitations imposed by the client or by the circumstances;
6. The nature and length of the professional relationship with the client;
7. The experience, reputation and ability of the lawyer or lawyers performing the services.

The following guidelines are not to be used as a substitution for the attorney's determination of what a reasonable fee would be in a given situation. Rather, the guidelines are established to assist attorneys by outlining what the Court will deem to be reasonable based upon the factors contained in Rule 1.5 of the Rules of Professional Conduct.

The basic guideline amounts are based upon usual and ordinary services. The guidelines also will assist in calculations of fees generated by the provision of extraordinary services.

Counsel are directed to examine the Domestic Relations Rules and Probate Rules of Wayne County with respect to fee matters pertaining to domestic relations cases, probate matters, and Mortgage Foreclosure And Mechanics Liens.

In cases involving the foreclosure of a mortgage, the Court will find as reasonable attorney fees, unless there is evidence to the contrary, the following:

- to \$1,500.00 for the first \$10,000.00 of judgment (or any portion thereon);
- to 5% of the next \$15,000.00;
- to 3% of the next \$25,000.00;
- to 1—1/2% of the next \$50,000.00;
- to 1% of the next \$150,000.00;
- to 1/2% of everything over \$250,000.00.

The above fees shall include conferences with client, preparation of notices, complaint and summons, obtaining judgment, and reasonable collection efforts. The Court will find as a reasonable fee in the amount up to One Hundred Ten Dollars (\$110.00) per hour for trial preparation and trial. In instances where additional fees are requested, the attorney shall file a Verified Petition/Affidavit which details the services and times expended thereon and includes those matters referred to in Rule 1.5 of the Rules of Professional Conduct.

#### Other Written Instruments Including Leases, Notes, and Contracts

In all cases where instruments provide for attorney's fees, or such fees are provided for by statute, except real estate mortgage foreclosure, in the absence of evidence to the contrary, the Court will find as reasonable attorneys fees, unless there is evidence to the contrary, the following:

Amount of Debt	% of fee to be awarded
The first \$3,000.00	33—1/3%
The next \$10,000.00	17%
The next \$12,000.00	8%
In excess of \$25,000.00	3%

The above fees shall include conferences with client, preparation of notices, complaint and summons, obtaining judgment, and reasonable collection efforts. The Court will find as a reasonable fee in the amount of One Hundred Ten Dollars (\$110.00) per hour for trial preparation and trial. In instances where additional fees are requested the attorney shall file a Verified Petition/Affidavit which details the services and times expended thereon and includes those matters referred to in Rule 1.5 of the Rules of Professional Conduct.

# **WAYNE COUNTY RULES OF CRIMINAL PROCEDURE**

Effective January 1, 1998

## **LR89-CR00-001 SCOPE**

These rules govern the procedure and practice of criminal cases in Wayne Circuit and Superior Courts unless otherwise provided by law or rules of the Supreme Court of Indiana, and are effective as of January 1, 1998.

## **LR89-CR00-002 RELEASE FROM CUSTODY - PROMISE TO APPEAR**

A. A person arrested and incarcerated without a warrant should be released from custody within forty-eight (48) hours of arrest unless a judicial determination of probable cause for arrest has been obtained.

B. A person arrested and incarcerated shall be permitted to post bail consistent with the Court's bail schedule unless otherwise ordered or communicated to the Sheriff by a judge.

C. Prior to release of a person pursuant to the 48 hour rule or upon posting bail, the person must complete a verified promise to appear, on a form approved by the courts, indicating his or her full name, date of birth, address, place of employment, home and work telephone numbers, social security number and promise to appear in the Court and at the time designated by the Sheriff. A copy of the Promise to Appear shall be provided to the arrested person and the Court designated for appearance.

D. Failure to appear as promised upon release from custody is cause for issuance of an arrest warrant.

E. All persons arrested and incarcerated shall be brought before the Court in which charges are filed within a reasonable period of time.

## **LR89-CR00-003 APPOINTED COUNSEL**

A. A defendant who is financially unable to obtain counsel is entitled to appointed counsel in accordance with this rule, except in misdemeanor cases where the prosecution is not seeking a sentence of incarceration. The determination of indigency will usually occur at the initial hearing. The defendant will be notified of the name, address and telephone number of appointed counsel within 48 hours of the order of appointment.

B. If such a defendant states that he or she is financially unable to obtain counsel, the Court will examine the defendant as to financial circumstances and may require financial statements and/or investigation of the defendant's financial circumstances. If the investigation reveals that the defendant is financially unable to obtain counsel, the Court will so find of record.



C. At the time of the initial hearing, a defendant for whom counsel is not appointed or for whom counsel has not entered an appearance will be scheduled for a hearing regarding counsel and ordered to appear for said hearing. The defendant should be instructed to contact attorney(s) in order to determine the costs of privately retained counsel and to report back to the Court at the time of the hearing regarding counsel his or her efforts and progress in retaining private counsel. A list of attorneys who have notified the Courts that they would consider representing criminal defendants and receive payment in installments shall be provided to a defendant upon request. Attorneys willing to consider providing representation under such an arrangement shall advise the Court Administrator in writing so as to be included on the list.

D. If the Court finds that the defendant is able to pay part of the cost of representation by appointed counsel, the Court may order the defendant to pay an appropriate sum to the Clerk of the courts to be deposited into the county's supplemental public defender services fund.

E. The Court may order a person for whom a public defender has been appointed to perform community service during a period of pre-trial release to compensate the county for the value of services.

F. Notwithstanding the provisions of this rule, the Court may appoint counsel for any person at any stage of the proceedings to prevent a failure of justice.

#### **LR89-CR00-004 APPEARANCE OF COUNSEL**

A. Any attorney representing a defendant shall appear for such defendant immediately upon being retained or appointed by signing and filing an appearance in writing containing counsel's name, attorney number, address, telephone number, a statement indicating whether counsel will accept service by fax. A copy of this appearance shall be served on the prosecution.

B. Pro Hac Vice admission: attorneys unlicensed in Indiana who wish to represent a defendant in Wayne County shall be required to comply with Rule 4 of the Indiana Rules for Admission to the Bar and the Discipline of Attorneys and file a motion seeking the Court's permission to represent the defendant. Said motion shall include:

1) an affidavit from the attorney stating that he or she has familiarized him or herself with Indiana cases, statutes, Criminal Rules of the Supreme Court and these local rules and that he or she does not routinely engage in the practice of law in Indiana, the latter statement supported by the number of criminal cases defended in Indiana in the last five years; and,

2) the signed appearance form of an attorney who is licensed to practice in Indiana who has agreed to serve as local counsel, who accepts responsibility for the defense of the case in the event that out of state counsel becomes unavailable, and who agrees to be present at each scheduled Court hearing, conference or trial in the cause.

C. The Prosecuting Attorney of Wayne County may have a standing appearance form filed with the Clerk of the Wayne Circuit, Superior 1, Superior 2, and Superior 3 Courts which shall be deemed of record and applicable in all pending criminal cases, save and except when an individual appearance form is filed by the State of Indiana in a given case.

#### **LR89-CR00-005 WITHDRAWAL OF COUNSEL**

A. Counsel desiring to withdraw their appearance shall file a motion requesting leave to do so.

B. If the motion to withdraw is granted, the Court will determine whether the then existing financial circumstances of the defendant necessitate the appointment of counsel, and if so, counsel shall be appointed forthwith so as to obviate delay in the proceedings. If the defendant is not qualified for appointed counsel, the defendant shall be ordered to pursue the retention of alternate counsel and report back to the Court within not less than fourteen days the results of all efforts made to retain another attorney.

C. A defendant who knowingly, intelligently and voluntarily chooses to represent himself or herself at trial must direct such request to the Court at least sixty days prior to trial. Otherwise, said request may be denied.

D. Counsel for the defendant may withdraw from the case for any reason, at any time up to thirty days before the omnibus date. Thereafter, the Court will allow counsel for the defendant to withdraw upon a showing that

- 1) there is a conflict of interest;
- 2) successor counsel has been obtained and substitution of new counsel would not cause any delay;
- 3) the attorney—client relationship has deteriorated to a point such that counsel cannot render effective assistance to the defendant;
- 4) the defendant insists upon self representation and the defendant understands that the withdrawal of counsel will not be permitted to delay the proceedings; or 5) there is a manifest necessity requiring that counsel withdraw from the case.

#### **LR89-CR00-006 INITIAL HEARING**

A. Initial hearing shall be conducted in open Court and shall consist of informing the accused of constitutional rights, reading the indictment or information to the defendant and informing the defendant of the substance of the charge(s), and the statutory penalty.

B. If the defendant is not represented by counsel the Court may enter a preliminary plea of “not guilty” for the defendant. An omnibus date, pretrial conference date and trial date will be set, and the defendant shall be informed that the setting of these dates triggers deadlines for filing certain motions and raising certain defenses as provided for by statute.

C. Absent a showing of good cause, no proposed plea agreement will be considered by the Court unless it is filed before the deadline set by the Court for such filing.

#### **LR89-CR00-007 STATUS CONFERENCE**

Upon request or sua sponte, the Court may schedule status conferences. A representative of the prosecutor's office and defense counsel shall appear. The defendant need not appear unless so ordered.

#### **LR89-CR00-008 PRE-TRIAL CONFERENCE**

A pre—trial conference will be scheduled at the initial hearing and otherwise at the Court's discretion. A representative of the prosecutor's office, defense counsel and defendant shall appear at all pre—trial conferences. Failure of the defendant to appear may result in revocation of a bond, an increase in bail, and/or the issuance of a warrant.

#### **LR89-CR00-009 WAIVER OF JURY TRIAL**

Jury trials shall only be waived by the defendant in open Court.

#### **LR89-CR00-010 JURY INSTRUCTIONS**

Any proposed instructions shall be served on opposing counsel prior to jury selection or as directed by the Court.

#### **LR89-CR00-011 MOTIONS**

If possible, motions shall be made in writing and shall be made at the earliest pre-trial opportunity.

#### **LR89-CR00-012 CONTINUANCES**

In ruling on a motion for continuance, the Court may take into account the consent or lack of consent of a party and the public interest in the prompt disposition of the case, as well as whether the continuance will have an adverse impact on a child who is a victim or witness in the case.

#### **LR89-CR00-013 CRIMINAL DISCOVERY**

A. The State of Indiana shall, except as otherwise provided, disclose to defense counsel and allow defense counsel to inspect and copy upon request of defense counsel the following information:

1. The names and addresses of persons known to be witnesses, together with copies of their written or recorded statements.

2. Copies of any written or recorded statements and the substance of any oral statements made by the accused, or made by a codefendant;
3. Those portions of grand jury minutes containing testimony of the accused and relevant testimony of witnesses who appeared before the grand jury with reference to the particular case;
4. Copies of any reports or statements of experts, made in connection with the particular case, including results of physical or mental examination and of scientific tests, experiments or comparisons;
5. Copies of any books, papers, documents, photographs or tangible objects, which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused;
6. Any record of prior criminal convictions of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial.

The prosecuting attorney shall further inform defense counsel if there has been any electronic surveillance of any conversation to which the accused was a party.

The prosecuting attorney shall further make available to defense counsel any material information within his or her possession or control which tends to mitigate or negate the guilt of the accused.

A request made under section (A) may be made in a notice filed with the Court and prosecuting attorney, making general reference to that section, and unsupported by memorandum, with the exception of requests for exculpatory evidence which, by law, must be made specifically in order to preserve claimed error for appeal.

(B) Subject to constitutional limitations, and limitations imposed by work product doctrine, the trial Court may require that the prosecuting attorney be informed of and permitted to inspect and copy or photograph any reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons.

Subject to constitutional limitations, the trial Court may require that the prosecuting attorney be informed of the nature of any defense which defense counsel intends to use at trial and the names and addresses of persons who defense counsel intends to call as witnesses in support thereof.

(C) The Court may order discovery of matters not covered by this rule, upon showing by counsel that it is material, the request is reasonable, and the matter is legally discoverable.

(D) Neither the counsel for the parties nor other prosecution or defense personnel shall advise persons having properly discoverable information (except the accused) to refrain from discussing the case with opposing counsel, nor shall they otherwise impede opposing counsel's investigation of the case.

(E) Any request or order for discovery pursuant to this rule shall continue in effect and apply to any information or material discovered subsequent to the initial compliance with such request or order.

(F) Any materials furnished pursuant to this rule shall remain in receiving counsel's exclusive custody and be used only for the purpose of conducting the case, and shall be subject to such other terms or conditions as the Court may provide.

(G) Upon a showing of good cause the Court may at any time order that specified disclosures be restricted or deferred, or make such other order as is appropriate.

(H) If, at any time during the course of the proceedings, it is brought to the attention of the Court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the Court may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, or enter such other order as it deems just, under the circumstances.

(I) Discovery, after request is made, and pursuant to this rule, shall be completed, insofar as possible, five days prior to pre—trial conference with counsel, as scheduled, without formal order of the Court.

(J) Willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the Court.

(K) Objections to any request for discovery shall be filed with the Court within ten days after request or motion for discovery is made.

#### **LR89-CR00-014 STIPULATIONS**

All stipulations must be reduced to writing, signed by counsel and by the defendant personally, and filed, unless made during the course of a hearing or trial in open Court.

#### **LR89-CR00-015 SELECTION OF JURY PANEL**

A list of the petit jurors called for the trial of a particular case shall be available not less than four business days prior to the trial date.

When jury panels have been drawn, the bailiff shall cause a questionnaire to be sent to each member of such panels to be answered and returned by such persons at least one

business day prior to the commencement of jury selection. Such completed jury questionnaires are confidential and may only be obtained or examined by attorneys of record. Requests to supplement the Court's jury questionnaire shall be made in writing, prior to the final pretrial conference and shall include a verbatim proposed questionnaire.

#### **LR89-CR00-016 VOIR DIRE**

The prosecutor and defense shall have an opportunity to question each prospective juror and observe questioning of the prospective juror by opposing counsel prior to passing or striking a prospective juror. Peremptory challenges shall be made in writing at the bench. If a prospective juror is stricken by both sides, each side is chargeable for the strike. A juror not stricken is passed. A challenge for cause can be raised at any time. The Court may put time limitations on jury questioning.

#### **LR89-CR00-017 FILING PROCEDURE FOR CRIMINAL CASES**

A. Misdemeanors are filed in Wayne Superior Court III unless the misdemeanor accompanies a felony charge filed in Wayne Circuit Court, Wayne Superior Court I, or Wayne Superior Court II.

B. The following felonies shall be filed in Wayne Superior Court III:

1. Battery, a class D felony, filed under I.C. 35-42—2—1.
2. All offenses based on Operating a vehicle while intoxicated or operating a vehicle with a controlled substance.
3. Possession of Marijuana, Hash Oil or Hashish, a class D felony, if the offense is a felony solely as a result of a prior conviction of an offense involving marijuana, hash oil or hashish.
4. All offenses involving Operating A Motor Vehicle while driving privileges are suspended or restricted.

C. If one accused of a felony is currently charged or on probation in Circuit Court, Superior Court I or Superior Court II, his new cause is filed in the Court having jurisdiction over the prior case or probation.

D. To promote efficiency and consistency in criminal felony cases with multiple defendants arising out of a common set of factual circumstances, such cases shall be filed in the same Court as the first of such related cases is filed (unless the previous filed felony or previous probation rule of paragraph 3 hereof dictates otherwise). Such related cases' status shall be identified by the prosecutor and thereby excepted from random or rotation filing, provided however that the Court receiving such filings may refer the cases back to the Clerk for random filing if the Court finds the multiple defendants rule inapplicable.

E. Except as otherwise dictated by paragraph 3 or paragraph 4 herein, if the accused is arrested for a felony without a warrant, his case is filed in that Court receiving general felony criminal filings that month. The Courts accept filing in rotation by month, Superior Court I following Circuit and preceding Superior Court II. Periodically, if distribution of cases is unacceptably disproportionate, an overloaded Court may be skipped over in the rotation by agreement of the Courts to accomplish a more equal distribution of cases between the Courts. The prosecutor and Clerk shall be notified in writing of any deviation from the rotation.

F. Except as otherwise dictated by paragraph 3 herein, if a warrant is obtained for the arrest of an accused, the warrant is obtained in, and the cause is prosecuted in the Court randomly selected by the computer in the Clerk's office.

G. Generally, search warrants will be issued by the Court accepting filings for arrests without warrants. However, any other Court may issue the warrant.

1. Applications for search warrants presented to any Judge during business hours shall be assigned a miscellaneous cause number and filed under seal with the Wayne County Clerk. Applications for search warrants presented outside of business hours shall be filed with the clerk on the next business day. Said applications shall be unsealed upon execution of the search warrant.

2. Search warrant returns should be filed with the clerk on the next business day.

H. If the Judge or personnel of a Court are required as witnesses in any cause, the cause shall not be filed in that Court but shall be filed in the next Court in the filing rotation.

I. When the State of Indiana chooses to refile a dismissed case, the case shall be assigned to the Court from which the dismissal was taken. This rule applies to all charges arising out of the same offense report, arrest report, or set of operative facts.

J. If a change of Judge is granted or it becomes necessary to assign another Judge in a criminal cause, such cause shall be transferred from Circuit Court to Superior Court I, Superior Court I to Superior Court II, Superior Court II to Circuit. Special Judges shall be selected for such cases in Wayne Superior Court III on a rotating basis from among the Judges of Wayne Circuit Court, Wayne Superior Court I and Wayne Superior Court II.

K. Transfer of cases shall be by written motion accompanied by written order for the signature of the forwarding Court. The order shall not be approved and signed by the forwarding Judge unless such order is consented to in writing by the Judge of the receiving Court.

L. If unusual and unforeseen circumstances occur, deviation from the provisions of this rule may be obtained for a particular case with the approval of the Courts.

## **LR89-CR00-018 FAILURE TO APPEAR**

If a defendant fails to appear before the court when summoned or otherwise ordered by the court to appear, the court may summarily issue a warrant for his or her immediate arrest and appearance before the Court.

## **LR89-CR00-019 BAIL**

A. Setting Bail. The Court will set the amount of bail that the accused shall be required to post. Warrant arrests shall include the amount of the bail on the face of the warrant. Prosecution requests for arrest warrants shall include the prosecution's recommendation regarding bail amount and the reasons therefore. Where charges are filed subsequent to arrest, the probable cause affidavit or oral probable cause submission shall include the prosecution's position as to the appropriate bail.

B. Filed motions for re-determination of bail will be given scheduling priority by the Courts.

C. Automatic 10% Cash Bonds: A 10% cash bond is either authorized by the Court or is authorized by the Sheriff's Department jail division using guidelines set forth by the Wayne County Courts. Subject to the following exceptions, a defendant charged with a misdemeanor or a Class D felony for whom bail has been set, may satisfy the requirement of bail by depositing ten percent (10%) of the amount of the bail in cash with the clerk of the Court as security for the full amount of the bail.

Exceptions: a defendant is not entitled to be released on a 10% cash bail if the defendant:

- 1) is charged with a sex offense, a crime of violence, fleeing or escape or;
- 2) has an unrelated pending criminal charge;
- 3) has been convicted of a felony within five years;
- 4) has a record of failure to appear;
- 5) has not been a resident of Wayne County for the preceding six months;
- 6) if the judge ordering arrest of the defendant notes on the warrant that the 10% cash deposit bond is not authorized;
- 7) if bail has been set in an amount exceeding \$5,000.00;
- 8) if the sheriff or clerk is in possession of information which reasonably should be considered before release on a 10% cash deposit bail.

A defendant applying for 10% cash bail must make, under affirmation, an application on a form approved by the Court.

D. CRIMINAL BAIL SCHEDULE (if bail is not otherwise set by Bonds increased 50% for persons admitted to bail on a separate Class A, B, or C felony charge in any Court or if charged as a habitual offender.)



<b>Murder</b>	<b>No bond.</b>
<b>Class A felonies</b>	<b>\$25,000 if suspendable</b> <b>\$50,000 if nonsuspendable</b>
<b>Class B felonies</b>	<b>\$15,000 if suspendable</b> <b>\$25,000 if nonsuspendable</b>
<b>Class C felonies</b>	<b>\$10,000 if suspendable</b> <b>\$15,000 if nonsuspendable</b>
<b>Class D felonies</b>	<b>\$5,000 if suspendable</b> <b>\$10,000 if nonsuspendable</b>

#### **Wayne Superior Court III Bond Schedule**

<b>Class D felony</b>	<b>\$5,000 surety or \$500 cash</b>
<b>Class A misdemeanor</b>	<b>\$1,000 surety or \$100 cash</b>
<b>Class B misdemeanor</b>	<b>\$1,000 surety or \$100 cash</b>
<b>Class C misdemeanor</b>	<b>\$1,000 surety or \$100 cash</b>
<b>Infractions</b>	<b>Not to be incarcerated</b>

Persons arrested upon Public Intoxication or Minor Consuming Alcoholic Beverage charges who are first time offenders, Wayne County residents and whose blood alcohol level is below .10% as set forth in I.C. 35-33-1—6 may be released upon the following bail: **\$500 surety or \$50 cash.**

Surety or cash bonds will be increased by 50% if the arrested person is not a Wayne County resident, or if the arrested person is on bond for a prior arrest.

The \$5.00 bonding fee (death benefit fee) is to be added to surety and cash bonds on all misdemeanor and truck violations. The fee is not to be added to felony charges.

The Clerk shall retain from the cash bond such administrative fees as are authorized by law.

#### **LR89-CR00-020 INTRA/INTERSTATE TRANSFER OF PROBATION**

This Rule applies to any person whose supervision of probation is transferred from any other county within Indiana to Wayne County as authorized by the Courts of Wayne County with the consent of the Wayne County Probation Department. This Rule also applies to any person whose supervision of probation is transferred from any other State to Wayne County as authorized by the Courts of Wayne County as required by the Interstate Compact adopted by the State of Indiana. Such persons whose supervision of probation is so transferred are subject to the rules of probation imposed by the Court in which sentence was imposed as well as the following general conditions of probation hereby imposed by the Courts of Wayne County, to-wit:.

- A. Violate no criminal law and possess no firearm or deadly weapon.
- B. Report to the Wayne County Probation Department at the times and places and in the manner as directed by the Probation Officer and permit the Probation Officer to visit the Defendant at Defendant's home or elsewhere.
- C. Report to the Probation Officer within seventy-two (72) hours any arrest, citation, or questioning by any law enforcement officer.
- D. Obtain written permission from the Probation Officer before:
  - (1). Changing place of residence.
  - (2). Leaving the State of Indiana.
  - (3). Quitting or changing employment.
- E. Upon reasonable suspicion that illegal activity is occurring, consent to the search of Defendant's person and/or property and/or automobile owned or operated by Defendant at the request of Defendant's Probation Officer or any law enforcement officer.
- F. Agree not to enter into any agreement or contract with any law enforcement agency to act an informant, drug buyer or assist in undercover police activities.
- G. Refrain from the use or possession of narcotics and other unlawful substances except as lawfully medically prescribed, and refrain from the consumption of alcohol and do not frequent any establishment that sells alcoholic beverages.
- H. Consent to and participate in all tests and examinations, including urinalysis, requested by the Probation Officer or treating agency to determine if Defendant has taken prescribed medication or engaged in prohibited substance abuse or consumption of Alcoholic beverages, and paying the cost of such test or examination; consent to the Release of information which the Probation Officer may request from the treating agency, and executing documents to evidence such consent upon request. The treating agency is ORDERED to inform the Probation Officer of any violation of any condition of this term of probation by Defendant.
- I. Diligently participate in and successfully complete such counseling or substance abuse treatment as will be arranged by the Probation Officer with any social service agency or facility.
- J. Enroll, participate in, and successfully complete those educational and vocational classes and programs including a GED or other suitable program as directed by the Probation Officer.
- K. Satisfactorily and diligently perform thirty-two (32) hours of community service per week in a program approved by the Wayne County Probation Department, with the Defendant to receive one (1) hour of credit against each weekly community service requirement for each hour Defendant spends in gainful private employment during such week, provided such employment is approved by the Wayne County Probation Department. Defendant shall furnish the Wayne County Probation Department and/or the Wayne County Community Corrections Office with proper verification of the hours spent in gainful employment with the Wayne County Probation Officer having the authority to reduce the community service requirement as circumstances necessitate by written agreement with the Defendant.
- L. If the Defendant is a sex offender or a violent offender as defined by Indiana Statute, the Defendant must register with local law enforcement authorities as a sex or violent offender as required by Indiana Statute.

M. If the Defendant is a sex offender or a violent offender as defined by Indiana Statute the Defendant may not reside within one thousand (1,000) feet of school property or within one mile of the residence of the victim of the offense upon which the Defendant was convicted and may not establish a new residence within one (1) mile of the victim unless the Defendant first obtains a waiver from the Court in which the Defendant was convicted.

N. If the Defendant is a sex offender or a violent offender as defined by Indiana Statute, the Defendant shall attend, actively participate in, and successfully complete a sex offender or violent offender treatment program as directed by the Wayne County Probation Department. Unsuccessful termination from treatment or non-compliance with other required behavioral management requirements will be considered a violation of probation.

O. If the Defendant is a sex offender as defined by Indiana Statute, the Defendant shall never be alone or have contact with any person under the age of sixteen (16) years. Contact includes face-to-face, telephonic, written, electronic, or any indirect contact via third parties. Any incidental contact with persons under sixteen (16) years of age must be reported to the Wayne County Probation Office within twenty-four (24) hours of the contact.

P. If the Defendant is convicted of an offense that would be a Misdemeanor as defined by Indiana Statute, the Defendant shall pay to the Wayne County Probation Department a fifty dollar (\$50) Administrative Probation Fee and a fifty dollar (\$50) Initial Probation Fee upon acceptance for supervision by the Wayne County Probation Department and a twenty dollar (\$20) monthly Probation Fee for each month that the Defendant remains under supervised probation in Wayne County.

Q. If the Defendant is convicted of an offense that would be a Felony as defined by Indiana Statute, the Defendant shall pay to the Wayne County Probation Department a one hundred dollar (\$100) Administrative Probation Fee and a one hundred dollar (\$100) Initial Probation Fee upon acceptance for supervision by the Wayne County Probation Department and a thirty dollar (\$30) monthly Probation Fee for each month that the Defendant remains under supervised probation in Wayne County.

R. The Defendant shall execute all written consents and provide all documents requested by the Wayne County Probation Department and permit the Wayne County Probation Department to ensure compliance of any and all conditions of probation imposed.

S. The Defendant shall not Knowingly make a false report or deceive the Wayne County Probation Department regarding any matter applicable to probationary supervision.

T. The Defendant shall permit a representative from the Wayne County Probation Department or its assignee to supervise and monitor the actions of Defendant to ensure that the Defendant is observing and abiding by the restrictions and conditions of probation as set forth herein.

## **WAYNE COUNTY RULES OF PROBATE**

Passed by Wayne County Bar Association Effective October 30, 1997

The following Rules of Court, hereafter to be cited as "Local Probate Rules," are hereby adopted and the same shall become effective on and after the 1st day of November, 1997.

### **LR89-PR00-001      Notice**

1.1 Whenever notice by publication and/or written notice by U.S. Mail is required to be given, the attorney shall prepare such notice and shall give sufficient numbers of the same to the Clerk who shall ensure that such notice is properly published and/or served by Certified mail, return receipt requested, or First Class Mail, as required by the Statute. It shall also be the attorney's responsibility to provide the Clerk with addressed and stamped envelopes when notice is to be made by First Class Mail.

1.2 Copies of petitions shall be sent with all notices where the hearing involved arises from the matters contained in the petition.

1.3 Notice of the opening of an estate shall be sent by First Class United States Mail to all readily ascertainable creditors.

1.4 On the filing with the Clerk by the personal representative or guardian of any petition, application, complaint, partial report, final report, or any report that requires fixing of date and place of hearing of same by the Court and giving notice thereof to any or all interested persons as required by law or order of the Court, the Clerk shall forthwith fix the date and place of hearing, by endorsement on the same, and shall give, for such personal representative or guardian, the required notice.

The Clerk shall then also make and record on the proper order book on the date of the filing of such petition or report, an order by the court fixing the date and place of hearing of such petition or report, the same as fixed thereon by the Clerk, and directing the Clerk to give for the personal representative or guardian the required notice.

1.5 The Wayne County Scheduling Clerk will accept calendaring responsibilities concerning notification to all personal representatives and guardians of the due date of any statutorily required inventory or accounting. A copy of such notice of due date will be mailed to the attorney of record for the personal representative or guardian.

### **LR89-PR00-002      Filing of Pleadings**

2.1 Routine pleadings, such as Inventories, Inheritance Tax Schedules, and Final Reports, may be filed with the Clerk for transmittal to the Court.

2.2 All attorneys are required to prepare orders for all proceedings except when expressly directed otherwise by the Court.

2.3 Every pleading, including Inventories, Petitions, and Accountings, filed in an Estate or Guardianship, shall be signed and verified by the fiduciary and signed by the attorney for the fiduciary.

2.4 All pleadings filed shall contain the attorney's name, address, telephone number, and attorney's Registration Number.

2.5 The initial petition to open an Estate or Guardianship shall contain the name, address, social security number and date of birth of the fiduciary, if a person.

### **LR89-PR00-003**

### **Bond**

3.1 In every Estate and guardianship, the fiduciary, prior to the issuance of letters, shall file a corporate surety bond not less than the value of the personal property to be administered, plus the probable value of annual rents and profits of all property of the estate in such amount as shall be set by the Court, except as hereafter provided:

A. Where, under the terms of the Will, the testator expresses an intention that the bond be waived, the Court shall set a bond, if any, adequate to protect creditors, tax authorities, and devisees.

B. Where the fiduciary is an heir or legatee of the estate, the bond may be reduced by such fiduciary's share of the estate.

C. Where the heirs or legatees have filed a written request that the fiduciary serve without bond, the bond, if any, may be set in the amount adequate to protect the rights of the creditors and tax authorities only.

D. In an unsupervised estate, bond may be set at the discretion of the Court.

E. No bond shall be required in any supervised estate or guardianship in which a corporate banking fiduciary, qualified by law to serve as such, is either the fiduciary or one of several co-fiduciaries.

F. Where, in the opinion of the Court, a surety bond may be safely waived, the Court may require the Personal Representative to file an Oath and Acceptance in lieu of a corporate surety bond.

3.2 In lieu of a bond as required by Rule 3.1, a fiduciary may restrict transfer of all or part of the estate or guardianship liquid assets by placing those assets in a federally-insured financial institution with the following restriction placed on the face of the account or document: NO PRINCIPAL OR INTEREST SHALL BE WITHDRAWN WITHOUT WRITTEN ORDER OF COURT OF, INDIANA.

3.3 All petitions to open an estate or guardianship shall set forth the probable value of the personal property plus the estimated annual rents and profits to be derived from the property in the estate or guardianship.

#### **LR89-PR00-004      Inventory**

4.1 An inventory shall be filed in duplicate by the fiduciary in all estates and guardianships, except unsupervised estates, within sixty (60) days; Guardianships within ninety (90) days for permanent guardians; and, within thirty (30) days for temporary guardians. All times relate to the appointment of the fiduciary.

4.2 In the event a partial inventory is filed, all subsequent inventories must contain a recapitulation of prior inventories.

#### **LR89-PR00-005      Sale of Real Estate**

5.1 When a Petition to Sell Real Estate is filed in a supervised estate or guardianship, it shall be accompanied by a written professional appraisal setting forth the fair market value of said real estate, unless such an appraisal was previously filed with the Inventory.

5.2 All appraisals required by Rule 5.1 shall be made within one (1) year of the date of the Petition to Sell Real Estate.

5.3 All deeds submitted to the Court for approval in either supervised estate or guardianship proceedings shall be submitted with the Report of Sale of Real Estate or at the time of the hearing on the Final Account. All such deeds shall be signed by the personal representative or guardian and notarized prior to the submission. Complete copies of such deeds shall be filed with the Court at the time the original is submitted for approval.

5.4 In a supervised estate, whenever a Final Decree reflects that real estate located in any county in the State of Indiana has vested in heirs or devisees, the Decree shall be recorded with the Recorder of the County in which any such real estate is located and evidence of said recording shall be provided to the Court with the Supplemental Report.

#### **LR89-PR00-006      Sale of Personal Property**

6.1 In all supervised estates and guardianships, no Petition to Sell Personal Property shall be granted unless a written appraisal prepared by a person competent to appraise such property and setting forth the Fair Market Value thereof, is filed with the Court at the time of the filing of the Petition to Sell, unless such appraisal was filed with the Inventory.

6.2 All appraisals required by Rule 6.1 shall be made within one (1) year of the date of the Petition to Sell.

6.3 No written appraisal shall be required for the sale of assets which are traded in a market and the value of which is readily ascertainable. Such assets include, but are not limited to, stocks, bonds, mutual funds, commodities, and precious metals.

**LR89-PR00-007      Claims**

7.1 Five (5) months and fifteen (15) days after the date of the first published notice to creditors, the fiduciary, or the fiduciary's attorney, shall examine the Claim Docket and shall allow or disallow each claim filed against the estate.

**LR89-PR00-008      Accountings**

8.1 Whenever an estate cannot be closed within one (1) year, an intermediate account shall be filed with the Court within thirty (30) days after the expiration of one (1) year and each succeeding year thereafter. Such accounting shall comply with the provisions of I.C. 29-1-16-4 and 29-1-16-6:

A. Shall state facts showing why the estate cannot be closed and an estimated date of closing.

B. Shall propose partial distribution of the estate to the extent that partial distribution can be made without prejudice to distributees and claimants.

8.2 All guardianship accounts shall contain a certification of an officer of any financial institution in which guardianship assets are held, verifying the account balance.

8.3 All Social Security or Medicare benefits received on behalf of an incapacitated person shall be included and accounted for in the guardianship accountings unless Court approval has been previously granted to allow said funds to be paid directly to a residential or health care facility.

8.4 In all supervised estate and guardianship accountings, vouchers or canceled checks for the expenditures claimed shall be filed with the accounting. No affidavits in lieu of vouchers or canceled checks will be accepted from individual fiduciaries. An affidavit in lieu of vouchers or canceled checks may be accepted from a state or federally chartered financial institution who serves as a fiduciary, provided the financial institution retains the vouchers or canceled checks on file or by electronic recording device and make same available to interested parties upon court order. The Court may require such institution to provide a Certification from its Internal Audit Department verifying the accuracy of the accounting.

8.5 In all supervised estate and guardianship accountings, a notation shall be placed by each expenditure indicating the reason for or nature of the expenditure.

EXAMPLE:

Bogata Drugs - Prescription drugs

Dr. John Jones - Medical services

Sam Smith - repair roof of home at 162 Maple Street, Anytown, Indiana

Tendercare Nursing Home - Nursing home care

8.6 All accountings to the Court shall contain an itemized statement of the assets on hand.

8.7 Receipts or canceled checks for all final distributions shall be filed either in the final report, or a supplemental report, before discharge will be granted by the Court.

8.8 All accountings shall follow the prescribed statutory format. Informal, handwritten, or transactional accountings will not be accepted.

8.9 All Court costs shall be paid and all claims satisfied and released before the hearing on the Final Account and a Clerk's Certification thereof shall be filed with the Court before such Final Account shall be approved.

8.10 The Federal Estate Tax Closing Letter and the Indiana Inheritance Tax Closing Letter (or the countersigned receipt), or a photocopy thereof, showing payment of all Federal Estate and/or Indiana Inheritance Tax liability payable by reason of a decedent's death, executed by the Internal Revenue Service or the Indiana Department of Revenue, shall be filed prior to entry of an Order on the Final Account.

8.11 In those estates where no Indiana inheritance tax is due, the Affidavit required to be filed with the local Assessor's Office shall also be filed under the estate's caption and cause number with the Clerk of the Court.

**LR89-PR00-009      Fees of Attorney and Fiduciary**

9.1 No fees for fiduciaries or attorneys shall be approved in any supervised estate or guardianship until the Court has approved a fee petition filed by the attorney for the estate.

9.2 A guardian or guardian's attorney may petition for fees at the time of filing an inventory. No further petition for fees may be filed until a biennial, annual, or final accounting has been filed.

9.3 No attorney of fiduciary fees will be determined and authorized for payment by the Court in any Unsupervised Administration of a decedent's estate.



9.4 Where contracts for legal services have been entered into prior or subsequent to the opening of an estate or guardianship, the Court reserves the right to approve or disapprove the fee contracts consistent with this Court's fee guidelines.

9.5 Rule 1.5 of the Rule of Professional Conduct has been adopted by the Supreme Court of Indiana to govern attorney fees. All fees charged by attorneys may be reasonable. The rule further enumerates the factors to be considered, which are as follows:

- (1) the time and labor required, the novelty and difficulty of questions involved, and the skills requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation and ability of the lawyer or lawyers performing the services.

The following guidelines are not to be used as a substitution for the attorney's determination of what a reasonable fee would be in a given situation. Rather, the guidelines are established to assist attorneys and fiduciaries by outlining what the Court will deem to be reasonable based upon the factors contained in Rule of Professional Conduct 1.5.

The basic guideline amounts are based upon usual and ordinary services. The guidelines also will assist in calculations of fees generated by the provisions of extraordinary services.

9.6 Unjustified delays in carrying out duties by the fiduciary and/or attorney may result in a reduction of fees.

#### **LR89-PR00-010      Unsupervised Administration**

10.1 Notwithstanding I.C. 29-1-7.5-2, no petition for administration without Court supervision shall be granted unless all of the requirements of I.C. 29-11-7.5-2(a) have been met and a written consent to unsupervised administration has been signed by all of the heirs and filed with the court.

10.2 All Court costs shall be paid and all claims satisfied and released on or before the date of the filing of the Closing Affidavit, and a Clerk's Certification thereof shall be filed with the Court at the time such Closing Affidavit is filed with the Court.

10.3 Every Closing Affidavit shall comply with Local Probate Rule 8.10.

10.4 No Orders as to attorneys fees, compliance regarding notice of administration to decedent's creditor's, or other orders shall be entered by the Court in unsupervised estates except that the Court shall enter an Order approving the verified closing statement as required by I.C. 29-1-7.5-4.

#### **LR89-PR00-011      Guardianships**

11.1 In all guardianship matters seeking to declare an adult incapacitated for any reason, the incapacitated person shall be present at the hearing or sufficient evidence shall be presented showing that the incapacitated person is unable to appear.

11.2 In all guardianship matters seeking to declare an adult incapacitated for any reason, a Physician's Report by the doctor treating the alleged incapacitated person, or such additional evidence as the Court shall require, shall be presented to the Court at the time the petition is filed or on the hearing date. No determination will be made without a supporting medical report or testimony.

11.3 Current reports filed by a guardian of the personal shall state the present residence of the incapacitated person and his general welfare. If the incapacitated person is an adult, a Report of a treating physician shall be filed with the current report, verifying that the incapacity of the person remains unchanged since the date the guardianship was established or the date of the last current report and that the living arrangements for the incapacitated person are appropriate.

11.4 In every petition for the appointment of a guardian of the person of a minor child, the following information shall be given:

- A. The child's present address.
- B. The places where the child has lived within the past two (2) years and the names and present addresses of persons with whom the child has lived during that period.
- C. Whether, to Petitioner's knowledge, any other litigation is pending concerning the custody of the child in this or any other state.
- D. Whether, to Petitioner's knowledge, any person not a party to this guardianship proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child.

11.5 Nothing herein shall be deemed as amending, superseding or altering the Probate Rules and Regulations promulgated by the Veteran's Administration of the United States of America, and every fiduciary and attorney shall comply with same, if applicable.

11.6 In all estate and guardianship matters involving either a claim for wrongful death or personal injury, the civil case and the corresponding guardianship or probate proceedings will be filed in the same Court without regard to the usual computer filing system which governs the filing of all other actions.

## **LR89-PR00-012      Miscellaneous**

12.1 (a) In those matters for which the Court has authority to grant an extension of time, the Court shall automatically grant one thirty (30) day extension upon the filing of a written petition on or before the otherwise applicable deadline.

(b) Any additional extension of time may be granted only upon the filing of an additional petition setting forth such good cause.

12.2 Procedure for past-due filings and reports:

(A) First Notice: A postcard notice will be mailed to the attorney when the matter becomes past due.

(B) Second Notice: If there is no response within thirty (30) days of the mailing of the First Notice, a letter notice from the Court will be mailed requesting compliance within fifteen (15) days.

(C) Court Order: If there is no response within fifteen (15) days of the mailing of the Second Notice, a Court order to show cause will be issued. Both the attorney and fiduciary must appear at the date and time specified in the Court Order.

(Note Rule 9.6 may be invoked in any of the above circumstances.)

12.3 In all probate matters, two (2) original orders shall be presented to the Clerk at the time of filing.

## **APPENDIX A. Computation of Fees**

PROBATE EXHIBIT A

COMPUTATION OF FEES

ESTATE OF

PROBATE NO.

1. Inventories Value of Estate \$
2. Income During Administration \$
3. Assets Omitted from Inventory \$

TOTAL \$

4. Total Gross Estate - Federal Estate Tax \$

PERSONAL REPRESENTATIVE ATTORNEY

First \$100,000 - 5% \$ 6% \$

Next \$200,000 - 4% \$ 5% \$

Next \$700,000 - 1% \$ 3% \$

Excess of \$1,000,000 - 1/2% \$ 2% \$

Total \$ \$

ADDITIONAL FEES

CLAIMED \$ \$

EXPLANATION OF ADDITIONAL FEES CLAIMED:

If additional fees are claimed, attach a detailed statement showing the nature of the services rendered, the time involved and the reasons why the same should generate additional fees. Please provide such additional information and supportive evidence as you think will enable the Court to weigh the claim for fees.

ATTORNEY & PERSONAL REPRESENTATIVE FEE GUIDELINES

I. Estate Administration:

Gross estate services are considered to normally include: probating the Will, opening the estate, qualifying the personal representative, preparing and filing the Inventory, paying claims, collecting assets, preparing and filing non-extraordinary petitions, preparing and filing of Fiduciary Income Tax Return, preparing and filing all tax returns and schedules, obtaining Court Orders thereon, and paying the taxes, preparing and filing the Final Report, obtaining Order approving same, distributing assets, obtaining discharge of the

personal representative, and preparing and serving all notices on interested parties throughout the proceedings. The list shall not be considered to be exclusive.

A. Gross Estate - Minimum Fee of \$800.00

Attorney:

First \$100,000.00, not to exceed.....6%  
Next \$200,000.00, not to exceed.....5%  
Next \$700,000.00, not to exceed.....3%  
Excess of \$1,000,000.00, not to exceed.....2%

Fiduciary:

First \$100,000.00, not to exceed.....5%  
Next \$200,000.00, not to exceed.....4%  
Next \$700,000.00, not to exceed.....1%  
Excess of \$1,000,000.00, not to exceed.....1/2%

B. Miscellaneous - Extraordinary Services:

1. Indiana Inheritance Tax Scheduled - (preparation and filing only) (To be applied only to non-administered property):

Attorney fees shall be one percent (1%) of the first \$100,000.00 of the non-administered assets of gross estate as determined for Indiana Inheritance Tax purposes:

Plus 3/4 of 1% of the next \$150,000.00 of non-administered assets of said gross estate.  
1/2 of one percent (1%) on all non-administered assets of said gross estate in excess of \$250,000.00. Personal Representative's fees shall be one-third (1/3) of the attorney fees.

2. Federal Estate Tax Returns - (To be applied only to non-administered property, to be based only on assets not listed on Indiana Inheritance Tax Schedule).

A base attorney fee of .....\$750.00 or

One percent (1%) of the first \$100,000.00 of the non-administered assets of the said gross estate as determined for Federal Estate Tax purposes,

PLUS, 3/4 of one percent (1%) of the next \$150,000.00 of non-administered assets of said gross estate,

PLUS, 1/2 of one percent (1%) on all non-administered assets of said gross estate in excess of \$250,000.00.

Personal Representative's fees shall be one-third (1/3) of attorney fees.

3. Other than as provided above.....Hourly Rate

(Attorney's expertise in probate matters will be considered by the Court in determining the applicable hourly rate)

## II. Wrongful Death Administration:

The Court recognizes that in most instances a retainer or contingent fee agreement is an appropriate method by which legal services can be provided in wrongful death claims. Accordingly, fees shall be allowed under such agreements if, at the time of settlement of the claim, it is shown to the Court's satisfaction:

1. That the Personal Representative was, prior to entering into such agreement, fully informed as to all aspects of the arrangement.
2. That the agreement is fair and reasonable.
3. That the fee sought is fair and reasonable.

## III. In General:

### A. Extraordinary Fee Requests

Fee petitions requesting extraordinary fees must set forth services rendered with specificity. Extraordinary services may include: sale of personal property, sale of real property, partial distribution, will contest actions, contesting claims, adjusting tax matters, contested hearings, petition for instructions, heirship determinations, generating additional income for the estate, etc. All such petitions will be set for hearing, with notice to all interested parties. If all interested parties sign a waiver and consent stating they have been advised the additional fee request exceeds the Court's guidelines and that the services as detailed are extraordinary, the Court may, in its discretion, determine if a hearing is required. An acceptable form of waiver is attached.

### B. Unsupervised Estates

The Court will determine and allow fees in an unsupervised administration.

## IV. Guardianship Administration:

Fees for the administration of guardianships shall be based on an hourly rate to be approved by the Court for both the attorney and the guardian. The Court will consider the attorney's and guardian's expertise in approving the hourly rate.

**WAYNE COUNTY RULES OF FAMILY LAW**  
Passed By Wayne County Bar Association Effective October 30, 1997

**LR89-FL00-001      SCOPE AND TITLE**

A. These Rules shall govern the procedure and practice of all family law and domestic relations matters in the Wayne Circuit and Superior courts unless otherwise provided by law or rules of the Supreme Court of Indiana. These Rules are in addition to and are not intended to replace the Wayne County Local Civil Rules of Court. In the event of a conflict in a family law or domestic relations matter, the Wayne County Family Law Rules shall apply.

B. These Rules shall be known as the Wayne County Rules of Family Law and shall be cited as Lfmr.

**LR89-FL00-002      ADMINISTRATIVE PROCEDURES**

A. Denomination of Pleading. If there is a request for a provisional order, the Petition for Dissolution of Marriage, Petition for Legal Separation, or Petition to Establish Paternity shall be denominated "Petition for Dissolution of Marriage (Legal Separation)(Paternity) And For Provisional Orders", whether such request for provisional orders is made separate from or as a part of the Petition.

B. Advise of time required. Attorneys shall advise the Court in the text of any preliminary or contempt petition if the matter cannot be heard on the regularly scheduled docket and shall provide an estimate of the time required in the event that more than 15 minutes is necessary.

C. Summary Hearing. By agreement of the parties, all issues and evidence relevant to a domestic relations case may be presented in summary fashion by counsel.

D. Copies of Decree required. When submitting a Final Decree and Property Settlement, the parties shall submit sufficient copies of each for the Court to retain an original and copy of each and provide copies to all counsel of record.

E. Bench Warrant. In order to obtain a bench warrant from the Court, a party must have personal service on the adverse party and complete a bench warrant on copy service with sworn testimony confirming actual notice to the adverse party.

F. Summons. In all relevant family law matters, the petitioner shall use the form of summons set forth in Appendix A.

**LR89-FL00-003      DISCLOSURE REQUIREMENTS**

Prior to any preliminary hearing or within thirty (30) days after service of any petition seeking relief in any family law matter, whichever shall first occur, each party shall provide the Court with written notice of any other pending legal proceeding in which such person is a party wherein the other pending legal proceeding involves an issue or

allegation of domestic violence, spousal abuse, child abuse, protective order, restraining order, or any criminal charges. The written notice should include the cause number of the legal proceeding, identification and location of the Court, names of the parties involved, and a brief summary of the nature of the legal proceeding.

#### **LR89-FL00-004      AGREED MODIFICATION**

An agreed modification entry shall not be approved by the Court without a petition for modification having first been filed. A Joint Petition for Modification or Stipulation for Agreed Entry of Modification shall specifically set forth the basis and reasons for such modification which meet the statutory requirements for such modification. The Stipulation or Joint Petition shall be separate and apart from the Order and shall not be combined in one pleading.

#### **LR89-FL00-005      CHILD SUPPORT GUIDELINES**

A. In all proceedings involving child support, each party shall file with any settlement, or submit to the Court at any hearing or trial, Indiana Child Support Guidelines worksheets - one or more depending upon the facts. In any request for provisional order that contemplates any order for child support a Child Support Worksheet with supporting documentation such as recent pay stub shall be attached to either the Motion for Provisional Order or Affidavit in Support. A response Child Support Worksheet with supporting document such as a recent pay stub shall be provided to the other party or to opposing counsel as the case may be, at least forty-eight (48) hours prior to the provisional hearing, unless reasonable circumstances prevent doing so and then such Child Support Worksheet shall be provided to the other party or opposing counsel at the earliest opportunity. Child Support Worksheets shall be promptly supplemented if changes occur prior to trial. Child Support Worksheets intended to be introduced at trial or final hearing shall be exchanged by the parties or counsel at least seven (7) days prior to trial.

B. If an agreement concerning support provides any deviation from the Guidelines, the parties shall present to the Court a written explanation, with supporting documentation, justifying the deviation. The proposed Order shall specifically state that the Court is deviating from the Child Support Guidelines and set forth the reasons for such deviation. In all proceedings involving child support, an Income Withholding Order shall be submitted with any Settlement Agreement or Final

Decree pursuant to Indiana Code 31-16-15-1 or the parties shall:

1. Submit a written agreement providing for an alternative child support arrangement; or,
2. Provide within the proposed Decree that “the Court determines that good cause exists not to require immediate income withholding” and stating the specific reasons therefore.



A. Requirement. In all relevant family law matters, including dissolutions of marriage, separations, post-decree and support proceedings, the party filing the petition/motion shall provide to the opposing party or his or her legal counsel, if applicable, a fully completed Financial Declaration Form with all required attachments within forty-five (45) days of the filing of such petition/motion. The opposing party shall provide to the petitioning party or his or her legal counsel, if applicable, a fully completed Financial Declaration Form with all required attachments within fifty (50) days of the filing of the petition/motion.

B. Exceptions. The Financial Declaration Form need not be exchanged if:

- (1) the parties agree in writing within fifty (50) days of the filing of the petition/motion to waive exchange;
- (2) the parties have executed a written agreement which settles all financial issues;
- (3) the proceeding is one in which the service is by publication and there is no response;
- (4) the proceeding is post-decree and concerns issues without financial implications; provided, however, when the proceeding is post-decree and concerns an arrearage, the alleged delinquent party shall complete the entire Form, while the support recipient need complete only that portion which requires specification of the basis of the arrearage calculation (with appropriate supporting documentation); or,
- (5) the Court otherwise waives such requirement.

C. Admissibility. Subject to specific evidentiary challenges, the Financial Declaration Form shall be admissible into evidence.

D. Supporting Documents. For the purpose of providing a full and complete verification of assets, liabilities and values, each party shall attach to the Financial Declaration Form all information reasonably required and reasonably available. this shall include recent bills, wage and tax records, bank records, pension and retirement account information, and mortgage account records. The term "reasonably available" means that material which may be obtained by letter accompanied with an authorization, but such term does not mean material that must be subpoenaed or is in the possession of the other party. Appraisals of real estate or personal property, or pension valuations are not required. However, once an appraisal or valuation is obtained it must be exchanged. Further, the Court may direct that an appraisal or valuation be obtained, just as it may designate the appraiser or valuator. The Court may require either party to supplement the Financial Declaration Form with appraisals, bank records, and other evidence to support the values set forth in the Form.

E. Financial Declaration - Mandatory Discovery. The exchange of Financial declaration forms constitutes mandatory discovery. Thus, Indiana trial Rule 37 sanctions apply. Additionally, pursuant to Indiana Trial Rule 26(E)(2) and (3), the Financial Declaration Form shall be supplemented if information changes or is added or if additional material becomes available. Any additional discovery such as Requests For Production, Interrogatories, or Depositions of the parties to the action shall not commence until the Financial Declaration Form has been exchanged. Any further discovery shall not seek to obtain information already obtained by the Financial Declaration Form.

F. Privacy - Sealing Of Financial Declaration Form. Whenever the interest of privacy so requires, the Court may, upon proper Motion, direct that the Financial Declaration Form(s) be sealed until further order of the court. However, such request(s) shall not be made as a matter of course. When ordered sealed, the Court Reporter shall place the Financial Declaration Form(s) in a flat manner in an envelope of sufficient size, seal the envelope, and affix a copy of the Order directing that the Financial Declaration Form(s) be placed under seal. Financial Declaration Form(s) may be withdrawn at the conclusion of the case on such terms as the Court may allow.

G. Clerk To Provide Notice Upon Filing. Upon the filing of any family law matter referred to in Rule 6(A), the Clerk shall provide to the moving party upon filing and to the non-moving party by service a Notice of the requirement of this Rule. Such Notice shall be in a form substantially as follows:

You are advised that the moving party is required to provide to the opposing party or his or her legal counsel, if applicable, a fully completed Financial Declaration Form with all required attachments within forty-five (45) days of the filing of such petition/motion. The opposing party shall provide to the petitioning party or his or her legal counsel, if applicable, a fully completed Financial Declaration Form with all required attachments within fifty (50) days of the filing of the petition/motion.

You are further advised that copies of the Financial Declaration Form may be obtained at the Clerk's Office, located on the Second Floor of the Wayne County Courthouse, 301 East Main Street, Richmond, Indiana.

Failure to timely provide a fully completed Financial Declaration Form with all required attachments may result in sanctions being entered against the party failing to comply with this Rule.

## **LR89-FL00-007      VISITATION ORDERS**

The phrase “reasonable visitation” if not specifically defined in the Court’s order is defined as those visitation rights agreed upon between the parties. To the extent the parties cannot agree to the particulars of such visitation, “reasonable visitation” shall be defined as those visitation rights provided for in the Wayne County Visitation Guidelines set forth in Appendix C, unless the court determines that under the particular circumstances a different visitation schedule is reasonable.

**LR89-FL00-008      TEMPORARY RESTRAINING ORDERS**

Subject to the provisions of Ind. Trial Rule 65, in an action for dissolution of marriage, legal separation or child support, the Court may issue a Temporary Restraining Order, without hearing or security, if either party files a verified petition alleging an injury would result to the moving party if no immediate order were issued.

**A. Joint Order.** If the Court finds that an order shall be entered, the Court may enjoin both parties from:

1. Transferring, encumbering, concealing, selling or otherwise disposing of any joint property of the parties or asset of the marriage without the written consent of the parties or the permission of the Court;
2. Removing any child of the parties then residing in the State of Indiana from the State of Indiana from the State with the intent to deprive the Court of jurisdiction over such child without the prior written consent of all parties or the permission of the Court.

**B. Separate Order Required.** In the event a party seeks to enjoin the non-moving party from abusing, harassing, disturbing the peace, committing a battery on the moving party or any child or stepchild of the parties, or exclude the non-moving party from the marital residence, and the Court determines that an order shall be issued, such order shall be addressed to one person only. *A joint or mutual restraining or protective order shall not be issued.* If both parties allege injury, they shall do so by separate petitions. The Court shall review each petition separately and grant or deny each petition on its individual merits. In the event the Court finds cause to grant both petitions, it shall do so by separate orders. The moving party shall provide the Court the following information concerning the non-moving party:

**Name:** \_\_\_\_\_

**SSN:** \_\_\_\_\_

**Age:** \_\_\_\_\_ **DOB:** \_\_\_\_\_ **OCE:** \_\_\_\_\_ **SEX:** \_\_\_\_\_

**Height:** \_\_\_\_\_ **Weight:** \_\_\_\_\_

**Scars, tattoos, or other identifiable characteristics?**

**Home address:** \_\_\_\_\_ **Tel No.** \_\_\_\_\_

**Work Address:** \_\_\_\_\_ **Tel. No.** \_\_\_\_\_

**Work Hours:** \_\_\_\_\_

## **LR89-FL00-009 ORDERS EXCLUDING A SPOUSE FROM THE RESIDENCE**

A. **Eviction Without Notice.** A Restraining Order without notice which would evict a spouse from the marital residence may be issued only upon the following bases:

1. There are alleged *specific* facts indicating more than a generalized fear of an adverse action; and
2. There is evidence of actual or threatened physical or emotional abuse sufficient to find a risk of *imminent* danger; and
3. The movant is physically available to testify unless there is a showing of exceptional circumstances precluding his or her availability; or
4. The applicant certifies to the Court the reasons supporting the claim why notice cannot be given.

In addition to the foregoing criteria, the court may consider any other relevant social or economic factors including whether either party has a reasonable alternative residence pending hearing on the provisional orders. In those circumstances where the court allows a party to be heard ex parte on the record and finds an emergency exists justifying issuance of an eviction order, the cause shall be set for preliminary hearing within ten (10) days with notice to all parties.

B. **Order.** If an Order granting exclusive possession of the marital residence to one spouse is entered by the Court, such Order shall contain the following language:

“The \_\_\_\_\_ is hereby restrained from entering marital residence located at \_\_\_\_\_ and the Wayne County Sheriff’s Department, Richmond Police Department, or other appropriate law enforcement agency shall use all reasonable force, including arrest, to remove a party from the premises upon presentation of such an Order.”

## **LR89-FL00-010 CHILD CUSTODY AND VISITATION: REFERRALS FOR INVESTIGATION AND REPORT**

A. On motion of either party with the approval of the Court, or on the Court’s own motion, contested matters involving child custody and visitation may be referred to appropriate sources for investigation and report to the Court.

B. All custodial evaluator reports or guardian ad litem reports which are court ordered regarding custody and/or visitation shall be admissible into evidence on the motion of either party without the evaluator needing to be present at the hearing. No part of this Rule is intended to supplant the right of either party to compel the attendance of the evaluator or other witnesses as set out in Ind. Trial Rule 45.

C. In all contested family law matters involving child custody or visitation, the provision of Ind. Trial Rule 35 providing for physical or mental examinations by a physician shall be extended to include examinations and evaluations by a psychologist, therapist or other qualified evaluator upon order of the Court.

### **LR89-FL00-011 FEES**

Provisional attorney fees may be awarded based on evidence presented by way of Affidavit (or oral testimony if the Court shall allow) at the provisional hearing. Affidavits shall be admissible subject to cross examination. The following factors will be considered and should be included in any Affidavit submitted to the Court:

1. The number and the complexity of the issues (e.g. custody dispute, complex asset valuation.
2. The nature and extent of discovery.
3. The time reasonably necessary for the preparation for or the conduct of contested pendente life matters or final hearings.
4. Other matters requiring substantial expenditure of attorney's time.
5. The attorney's hourly rate.
6. The amount counsel has received from all sources.
7. The ability of the opposing party to pay the requested fees and the disparity of income between the parties.

When the Court finds that attorneys fees should be awarded, the Court may find as

reasonable attorney fees an amount of up to Five Hundred Dollars (\$500.00) for provisional attorney fees in a "basic/routine" Dissolution of Marriage case.

Appraisal or accounting fees may be awarded based on evidence presented by affidavit (or oral testimony if the Court shall allow) at a preliminary hearing. The following factors will be considered:

1. Itemized list of property to be appraised or valued (e.g. Defined Benefit Pension, Business Real Estate, Furnishings, Vehicles, etc.).
2. An estimate of the cost of the appraisals and the basis therefore.

3. The amount of a retainer required and the reason an expert is necessary.

C. Contempt Citation Attorney Fees. There shall be a rebuttable presumption that attorney fees will be awarded to the prevailing party in all matters involving a contempt citation. An attorney may submit by affidavit (or oral testimony if allowed by the Court) along with an itemized statement his requested fee. Affidavits shall be admissible into evidence by the Court.

D. Final or Interim Attorney Fees. Final or interim attorneys fees may be awarded based on evidence presented by way of Affidavit (or oral testimony if allowed by the Court) at the final hearing or any interim hearing requested by either party. The same factors as set out in Paragraph A above will be considered by the Court.

### **LR89-FL00-012 CHILD SUPPORT ORDERS**

A. Provisional Child Support Orders. There is hereby created a rebuttable presumption that provisional child support orders shall be made retroactive to the first Friday following the date of filing of a written request for a provisional child support order. Such presumption may be rebutted upon a showing that such retroactivity is inappropriate under the facts of a particular case. This Rule is effective with all requests for provisional child support orders filed on and after March 1, 2003.

B. Modification Of Post-Decree Child Support Orders. There is hereby created a rebuttable presumption that modification of post-decree child support orders shall be made retroactive to sixty (60) days following the filing of the petition for modification.

This Rule shall not apply where a change of child custody is involved. This Rule is effective with all petitions for modification of post-decree child support orders filed on and after March 1, 2003.

C. Exchange Of Financial Documentation Before Hearing. At least fourteen (14) days before the scheduled provisional or modification hearing, the parties shall exchange their three (3) most recent paystubs, most recent W-2 and tax return, 1099's for income earned, and any documentation as to unemployment compensation or disability pay received within the last year

### **LR89-FL00-013 HELPING CHILDREN COPE WITH DIVORCE**

A. Before final hearing is scheduled on a petition for Dissolution of Marriage or Petition for Legal Separation in which the parties have minor children of the marriage, each party must attend not less than one session on Helping Children Cope With Divorce.

B. The sessions will be conducted by Behavioral Health Care Associates, 800 South 8th Street, Richmond, Indiana, 47375, and will be held at their facility.

C. Each party to the proceeding shall call Behavioral Health Care Associates at 765983-8079 or 765-983-8085 within twenty days from the filing of the petition for the purpose of registering for the program. Each party shall provide Behavioral Health Care Associates with the cause number of the proceeding when they place the call or by bringing it with them to the session.

D. The moderator of each session will provide each attendee with a certificate of attendance, which must be filed with the Court's Clerk prior to the Court's granting the Petition for Dissolution of Marriage or Petition for Legal Separation.

E. Each party is responsible for payment to Behavioral Health Care Associates of the \$30.00 cost of that party's participation. Allowances for waiver of fee will be given upon a good-faith showing of indigence.

F. Participants may not bring children to these sessions. G. Make up sessions will be scheduled at dates and times to be by Behavioral Health Care Associates to accommodate those individuals who have

irreconcilable conflicts with the Wednesday meeting dates.

H. In those limited circumstances where it is clearly apparent that a party's compliance with this rule cannot be compelled, upon written motion, the Court may grant a waiver of its application.

I. The Clerk is directed to provide a copy of this rule to all petitioners or their attorneys at the time of filing of any Dissolution of Marriage Petition or Petition for Legal Separation if the parties have minor children, and attach a copy of this rule to such Petitions to be served with Summons.

J. If one party has failed to attend the class as required, the complying party may file a Praecipe with the Court requesting that the Court enter an Order requiring the opposing party to attend the class by a date certain or be subject to contempt of court.

### **LR89-FL00-014 CONTACT WITH CUSTODIAL EVALUATORS**

In the event a custodial evaluation is ordered by the Court, the Court shall direct the parties to contact the custodial evaluator to arrange for an appointment with the custodial evaluator. Other than making contact with the office of the custodial evaluator to arrange for the client's appointment with the custodial evaluator, counsel shall not initiate contact or otherwise communicate with the custodial evaluator until the custodial evaluator's report has been issued. Prohibited contact or communication shall include the sending of school records, medical records, affidavits, reports, or any other type of written record by the attorney to the custodial evaluator. Information which may be requested by the custodial evaluator shall be delivered or otherwise presented to the evaluator by the party and not counsel. In the event the custodial evaluator should contact counsel before the evaluator's report has been issued, such fact should be promptly conveyed to opposing counsel indicating the specific dialogue between counsel and the custodial evaluator. Following the issuance of the evaluator's report, the evaluator shall be deemed a witness and counsel shall be permitted ex parte communication with the evaluator at counsel's/client's expense.

Whenever a Court orders a custodial evaluation the Court shall attach a copy of this Rule to its order and shall have the Clerk distribute such order and attached Rule to the designated custodial evaluator

### **LR89-FL00-015 TERMINATION OF REPRESENTATIVE CAPACITY**

A. Upon the entry of final Decree of Dissolution of Marriage, Legal Separation, Paternity, or and Order of permanent modification of any custody, visitation and/or child support Order, the representative capacity of all attorneys appearing on behalf of any party shall be deemed terminated upon:

1. An order of withdrawal granted pursuant to Wayne County Local Rule 3 ~r,
2. The expiration of time within which an appeal of such Order may be preserved or perfected pursuant to the Indiana Rules of Trial Procedure and/or the Indiana Rules of Appellate Procedure; or,

3. The conclusion of any appeal of such Order commenced pursuant to Indiana Rules of Trial Procedure and/or the Indiana Rules of Appellate Procedure.

B. The service of any post dissolution pleadings upon any party not represented by counsel pursuant to paragraph A above, shall be made upon that person pursuant to Indiana Rules of Trial Procedure.

C. Any copy served upon original counsel will be deemed to be a matter of professional courtesy only; however, such professional courtesy is encouraged and if a courtesy copy of such petition is sent to a representative, whether terminated or not, such shall be shown on a certificate of service.



**APPENDIX A. SUMMONS (Green in color)**  
**SUMMONS**

IN THE WAYNE CIRCUIT AND SUPERIOR COURTS

IN RE: \_\_\_\_\_

\_\_\_\_\_  
Petitioner  
and

CAUSE NO. \_\_\_\_\_

\_\_\_\_\_  
Respondent  
TO RESPONDENT:

(Name) \_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_

You are hereby notified that you have been sued by the Petitioner for (Dissolution of Marriage) (Legal Separation) (Paternity) (Child Support) in the Court indicated above.

If this summons is accompanied by an Order to Appear, you must appear in Court on the date and time stated in the Order to Appear. If you do not appear, evidence may be heard in your absence and a determination made by the Court. If a Temporary Restraining Order is attached, it is effective immediately upon your receipt or knowledge of the Order.

If you wish to retain an attorney to represent you in this matter, it is advisable to do so before the date stated in the Order to Appear.

If you take no action in this case after receipt of this summons, the Court can grant a Dissolution of Marriage (Legal Separation) or make a determination regarding any of the following: paternity, child custody, child support, maintenance, visitation, property division (real or personal) and any other distribution of assets and debts.

Dated: \_\_\_\_\_  
Clerk, Wayne County

(The following manner of Service of Summons is hereby designated.)

\_\_\_\_ Registered or Certified Mail  
\_\_\_\_ Service on Individual  
\_\_\_\_ Service at place of employment, to-wit: \_\_\_\_\_  
\_\_\_\_ Private Service

**SHERIFF'S RETURN OF SERVICE OF SUMMONS**

I hereby certify that I have served this summons on the \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_.

(1) By delivering a copy of the Summons and a Copy of the complaint to the defendant, \_\_\_\_\_.

(2) By Leaving a copy of the Summons and a copy of the complaint at \_\_\_\_\_ which is the dwelling place or usual place of abode of and by mailing a copy of said summons to said defendant at the above address.

(3) Other Service or Remarks: \_\_\_\_\_

\_\_\_\_\_  
Sheriff's Costs

\_\_\_\_\_  
Sheriff

By: \_\_\_\_\_  
Deputy

**CLERK'S CERTIFICATE OF MAILING**

I hereby certify that on \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, I mailed a copy of this Summons and a copy of the complaint to the defendant, \_\_\_\_\_, by \_\_\_\_\_ mail, requesting a return receipt, at the address furnished by the plaintiff.

\_\_\_\_\_  
Clerk, Wayne County

Dated: \_\_\_\_\_, 19 \_\_\_\_ By: \_\_\_\_\_  
Deputy

RETURN OF SERVICE OF SUMMONS BY MAIL

I hereby certify that the attached receipt was received by me showing that the Summons and a copy of the complaint mailed to defendant \_\_\_\_\_ was accepted by the defendant on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

I hereby certify that the attached return receipt was received by me showing that the Summons and a copy of the complaint was returned not accepted on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

I hereby certify that the attached return receipt was received by me showing that the Summons and a copy of the complaint mailed to defendant \_\_\_\_\_ was accepted by \_\_\_\_\_ on behalf of the defendant on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Clerk, Wayne County

By: \_\_\_\_\_  
Deputy

## **APPENDIX B. VISITATION GUIDELINES**

### **INTRODUCTION**

Arranging for a child's permanent residence and access to each parent is one of the first joint decisions that a divorcing couple must make. It is usually in the child's best interest for each parent to have a frequent, meaningful and continuing relationship with their children. For children to make an adequate adjustment to the dissolution of their parents marriage, the children must be allowed to continue their relationship with both parents, experience minimal changes in their lifestyle if at all possible, and not experience post-divorce conflict between their parents. An Access/Visitation Agreement made by both parents is preferable to a court imposed solution. However, if the parents are unable to agree on access/visitation, the following guidelines shall be used in most cases.

These guidelines are not meant to provide minimum or maximum access, but to set forth a standard, which can be adjusted depending on the unique needs and circumstances of each family. There may be additional decisions that will have to be made in families with more than one child or additional decisions may have to be made if there are geographical distances between the divorcing parents and the children. Also, in situations where the non-custodial parent may not have had ongoing contact with the children, initial visitation may be shorter.

The parents, in exercising visitation, should be flexible enough to adapt to the circumstances, the child's age and developmental needs, and on-going activities.

#### **I. Birth to 1 Year of Age**

##### **A. Routine Access:**

1. Non-custodial parent shall have four (4) visits with the child per week, with such contact lasting four (4) hours in length.
2. If the child is taken from the home of the custodial parent, the child shall be returned at least one (1) hour before evening bedtime.
3. Overnights are not recommended

B. Holiday Access:

1. Holiday access takes precedence over the regularly scheduled visitation plan.
2. The non-custodial parent shall be entitled to the following:
  - a. On each child's birthday from 5:00 p.m. until 8:00 p.m.;
  - b. Memorial Day Monday from 2:00 p.m. until 6:00 p.m.;
  - c. Labor Day Monday from 2:00 p.m. until 6:00 p.m.;
  - d. Thanksgiving Day from 2:00 p.m. until 6:00 p.m.;
  - e. Christmas Day from 2:00 p.m. until 6:00 p.m.;
  - f. Independence Day from 2:00 p.m. until 6:00 p.m.;
  - g. Mother's Day with Mother from 2:00 p.m. until 4:00 p.m. and Father's Day with Father from 2:00 p.m. until 4:00 p.m.

**II. 1 Year of Age to 5 Years of Age**

A. Routine Access

1. If the non-custodial parent has had consistent contact with the child, the non-custodial parent shall have access on alternate weekends from Friday at 6:00 p.m. until Sunday at 6:00 p.m.
2. If the non-custodial parent has had minimal contact with the child prior to the separation the non-custodial parent shall have access on alternate weekends from Saturday morning at 10:00 a.m. until Sunday evening at 6:00p.m.
3. Additionally, the non-custodial parent shall be permitted one (1) week night each and every week with the child from 5:30 p.m. until 7:30 p.m.

B. Holiday Access:

1. Holiday access takes precedence over the regularly scheduled access/visitation plan.
2. The non-custodial parent shall be entitled to the following:

In years ending in an odd number:

- a. The night before each child's birthday from 5:00 p.m. until 8:00 p.m.;
- b. Memorial Day Monday from 9:00 a.m. until 6:00 p.m.;
- c. Independence Day from 9:00 a.m. until 6:00 p.m.;
- d. Thanksgiving Day from 9:00 a.m. until 6:00 p.m.;
- e. Christmas Eve from 6:00 p.m. until Christmas Day at 10:00 a.m.;

In years ending in an even number:

- a. Each child's birthday from 5:30 p.m. until 7:30 p.m.;
- b. Easter from 8:00 a.m. until 6:00 p.m.;
- c. Labor Day Monday from 9:00 a.m. until 6:00 p.m.;
- d. Halloween evening from 5:30 p.m. until 8:00 p.m.;
- e. Christmas Day from 10:00 a.m. until 7:00 p.m..

### C. Summer Visitation

1. The non-custodial parent shall have one (1) week of vacation with the children each June, July and August of each year. The non-custodial parent shall notify the custodial parent in writing no later than May 1 of each year as to the specific weeks of such summer visitation.

## III. 5 Years of Age and Beyond

### A. Routine Access:

1. Non-custodial parent shall have access with the child on alternate weekends from Friday at 6:00 p.m. until Sunday at 6:00 p.m. and on the Wednesday preceding the weekend access from 5:30 p.m. to 7:30 p.m.
2. In addition, the non-custodial parent shall have access with the child during the week immediately following the weekend visitation on Tuesday and Thursday evening from 5:30 p.m. until 7:30 p.m..

### B. Holiday Access:

1. Holiday access takes precedence over the regularly scheduled access/visitation plan.
2. The non-custodial parent shall be entitled to the following:  
In years ending in an odd number:
  - a. The night before each child's birthday from 5:00 p.m. to 8:00 p.m.;
  - b. Spring Break from Friday at 6:00 p.m. to the Sunday prior to the start of school at 6:00 p.m.;
  - c. Memorial Day weekend from 6:00 p.m. on Friday until 6:00 p.m. on Monday;
  - d. Independence Day from 6:00 p.m. on July 3 until 6:00 p.m. on July 5;
  - e. Thanksgiving holiday from 6:00 p.m. on Wednesday until 6:00 p.m. on Sunday;
  - f. From 6:00 p.m. on December 26 until 6:00 p.m. on January 1st.

In years ending in an even number:

- a. Each child's birthday from 5:30 p.m. until 7:30 p.m.;
- b. Easter weekend from 6:00 p.m. on Good Friday until 6:00 p.m. on Easter Sunday;
- c. Labor Day weekend from 6:00 p.m. on Friday until 6:00 p.m. on Monday;
- d. Halloween evening from 5:30 p.m. until 9:00 p.m.
- e. Christmas holiday from 6:00 p.m. on December 20 until 6:00 p.m. on December 26.

### C. Mother's Day/Father's Day

1. The mother shall have access every Mother's Day weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m.;

2. The father shall have access every Father's Day weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m.

**D. Summer Visitation:**

1. The non-custodial parent shall have five (5) weeks of summer visitation with the child to be taken in no more than two (2) week intervals and with such weekly or two (2) week visits to be non-consecutive. The non-custodial parent shall notify the custodial parent in writing no later than May 1 of each year as to the specific weeks of such summer visitation.

## APPENDIX C

### GENERAL RULES APPLICABLE TO ALL WAYNE COUNTY

#### VISITATION AND SUPPORT GUIDELINES

##### 1. **Conflicts Between Regular Weekend, Holiday, and Extended Summer**

**Visitation.** Where there is a conflict between a holiday weekend and the regular weekend visitation, the holiday takes precedence. Thus, if the non-custodial parent misses a regular weekend because it is the custodial parent's holiday, the regular alternating visitation schedule will resume following the holiday. If the non-custodial parent received two consecutive weekends because of a holiday, the child will spend the following weekend with the custodial parent. When there is a conflict between holiday visitation and extended summer visitation, the holiday visitation takes precedence. When there is a conflict between regular weekend visitation and extended summer visitation, extended summer visitation takes precedence.

2. **Appropriate Conduct By Parents.** Parents shall, at all times, avoid speaking negatively about each other and should firmly discourage such conduct by relatives or friends. Each parent should encourage the children to support the other parent. The basic rules of conduct and discipline established by the custodial parent should be the baseline standard for both parents, and consistently enforced by both, so that the children do not receive mixed signals.

3. **Parental Communication.** Parents shall at all times keep each other advised of their home and work addresses and telephone numbers. So far as possible, all communication concerning the children shall be conducted between the parents in person, or telephonically at their residences (and not at their places of employment).

4. **Grade Reports and Medical Information.** The custodial parent shall provide the non-custodial parent with grade reports and notices from school as they are received

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-  
-  
-

and shall, consistent with Indiana law, permit the non-custodial parent to communicate concerning the children directly with the school and with the children's doctors and other professionals, outside the presence of the custodial parent. Each parent shall immediately notify the other of any medical emergencies or serious illnesses of the children. The custodial parent shall notify the non-custodial parent of all school or other events (like Church or Scouts) involving parental participation. If the children are taking medications, the custodial parent shall provide a sufficient amount and appropriate instructions.

5. **Visitation Clothing.** The custodial parent shall send an appropriate supply of the children's clothing with them which shall be returned clean (when reasonably possible), with the children, by the non-custodial parent. The non-custodial parent shall advise, as far in advance as possible, of any special activities so that the appropriate clothing may be sent.

6. **Visitation or Support Disputes.** Neither visitation nor child support is to be withheld because of either parent's failure to comply with a court order. Only the Court may enter sanctions for non-compliance. The children have a right to both support and visitation, neither of which is dependant upon the other. In other words, failure to pay support does not mean no visitation and no visitation does not mean no support. If there is a violation of either a visitation or a support order, the exclusive remedy is to apply to the court for appropriate sanctions.

7. **Adjustments to This Visitation Schedule.** Although this is a rather specific schedule, the parties are expected to fairly modify visitation when family necessities, illnesses or commitments reasonably so require. The requesting party shall give as much notice as circumstances permit.

8. **Pick-up and Drop-off.** Unless other arrangements are made, the non-custodial parent shall pick up the children at the times specified and return them at the times.



specified. The custodial parent shall have the children ready for visitation at the time they are to be picked up and shall be present at the home to receive the children at the time they are returned. Unjustified violations of this provision may result in the offender being subject to contempt of court. (**Commentary:** While it is most desirable for the parents to pick up and return the children, this provision does not prohibit grandparents, current spouses or other appropriate adults known to the children.)

9. **Extracurricular Activities.** Children are often involved in sports, lessons, and other extracurricular activities, which are generally to their benefit and enjoyment. Each parent shall recognize that a reasonable amount of extracurricular activities are generally assumed to be in the children's best interests. Each parent should attempt to be flexible in order to accommodate the children's extracurricular activity schedules as much as reasonably possible, although extracurricular activities should not supersede summer visitation with non-custodial parents, nor should they be used as a method by which to deny access to the non-custodial parent. In recognition of the scheduling difficulties that can be caused by children's extracurricular activities, custodial parents should act in good faith in attempting to schedule such extracurricular activities as not to unreasonably infringe upon the non-custodial parent's access to the children. Likewise, the non-custodial parent should act in good faith in attempting to assist in transportation needs and in accommodating the children's extracurricular schedules as much as reasonably possible. Good faith communication by the parents is essential with regard to the difficult issue of the scheduling of children's extracurricular activities.

10. **Notice of Canceled Visitation.** Whenever possible, the non-custodial parent shall give a minimum of three (3) days notice of intent not to exercise all or part of the scheduled visitation. When such notice is not reasonably possible, the maximum notice permitted by the circumstances, and the reason therefore, shall be given. The

custodial parent shall give the same type of notice when good cause exists making the cancellation or modification of scheduled visitation necessary.

11. **Missed Visitation.** In the event the non-custodial parent misses visitation as the result of illness of the child or parent, an emergency, or other such reasonable excuse, the parties shall make a good faith effort to make up a portion of that visitation within a reasonable period of time, understanding the importance of the non-custodial parent's continuing and frequent contact with the children. (**Commentary:** It is important to remember that illness should not necessarily deprive the non-custodial parent of visitation with the children. Clearly, a non-custodial parent can take care of a sick child as well as the custodial parent in many circumstances.)

12. **Custodial Parent's Vacation.** Unless otherwise specified, the custodial parent shall be entitled to a period of vacation with the children no less than that accorded the non-custodial parent, whose visitation shall abate during the first fourteen days thereof, and thereafter only so long as distance makes visitation impracticable.

13. **Caretaker Provision.** As a general rule, each parent shall have the right of first refusal for child care or babysitting needs of the other parent for durations of four hours or more. Whenever either parent has a need for child care or babysitting for a duration of four hours or more, that parent should always make a good faith attempt first to inquire of the other parent, with as much advance notice as reasonably possible, whether the other parent desires to provide child care or babysitting. The other parent is under no obligation to provide the child care or babysitting. If the other parent elects to provide such child care or babysitting, it shall be done at no cost. This provision is intended to provide each parent additional access to the children whenever reasonably possible.

14. **Telephone and Mail Privileges.** Each parent shall allow liberal and reasonable telephone and mail privileges with the children.

15. **Medical Reports and Bills.** The Custodial parent shall provide copies of all medical information, and documentation, including bills, within seven (7) days of their receipt and shall immediately notify the other parent in the event of a medical emergency. Every effort shall be made for the custodial parent to provide the non-custodial parent with the necessary information of a medical expense in order to get the bill satisfied. The parent with the medical insurance shall provide the other parent with a copy of the explanation of benefits with seven (7) days from the date of receipt of same so that the uninsured portion of the bill can be quickly calculated and paid within a reasonable period of time.

16. **Abatement of Support During Extended Visitation.** If the non-custodial parent's support obligation is current, support shall abate by 50 percent during any visitation of seven (7) consecutive days or more. If support is not current, the 50 percent that would have been abated shall be paid and shall apply to the existing arrearage. (**Commentary:** If the custodial parent actually receives the full amount of child support during this period and if support is current, it is the custodial parent's obligation to refund the money immediately to the non-custodial parent. This alleviates many of the problems that arise when wage withholding orders have been issued.)

17. **Modification.** If the parties mutually agree permanently to change the provisions of their decree of divorce, they must petition the Court to approve and order that change. In the event that the parties do not obtain a court order, the Court will not be bound by any alleged agreement of the parties.

**APPENDIX D**

**FINANCIAL DECLARATION FORM**  
**STATE OF INDIANA: CIRCUIT AND SUPERIOR COURTS OF WAYNE COUNTY**

IN RE THE MARRIAGE OF: CAUSE NO. \_\_\_\_\_

-

\_\_\_\_\_  
Petitioner

and

\_\_\_\_\_  
Respondent

FINANCIAL DECLARATION OF \_\_\_\_\_ Date: \_\_\_\_\_

Husband\* \_\_\_\_\_ Wife\* \_\_\_\_\_

Address \_\_\_\_\_ Address \_\_\_\_\_

Soc Sec. No. \_\_\_\_\_ Soc. Sec. No. \_\_\_\_\_

Badge/Payroll No. \_\_\_\_\_ Badge/Payroll No. \_\_\_\_\_

Occupation \_\_\_\_\_ Occupation \_\_\_\_\_

Employer \_\_\_\_\_ Employer \_\_\_\_\_

Birth Date \_\_\_\_\_ Birth Date \_\_\_\_\_

Date of Marriage: \_\_\_\_\_

Date of Physical Separation: \_\_\_\_\_

Date of Filing: \_\_\_\_\_

Names and dates of birth of all children of this relationship, whether by birth or adoption:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
NOTE: THIS DECLARATION IS CONSIDERED MANDATORY DISCOVERY AND MUST BE EXCHANGED BETWEEN PARTIES WITHIN THE TIME PRESCRIBED BY THE WAYNE COUNTY RULES OF FAMILY LAW. PARTIES NOT REPRESENTED BY COUNSEL ARE REQUIRED TO COMPLY WITH THESE PRACTICES. FAILURE BY EITHER PARTY TO COMPLETE AND EXCHANGE THIS FORM AS REQUIRED WILL AUTHORIZE THE COURT TO IMPOSE THE SANCTIONS SET FORTH IN THE WAYNE COUNTY RULES OF FAMILY LAW.

\*In paternity actions, the term "husband" includes the putative father and the term "wife" includes the mother

## PART I: INCOME AND EXPENSE STATEMENT

### STATEMENT OF INCOME, EXPENSES, ASSETS AND LIABILITIES

Attach copies of state and Federal Income Tax Returns for last three taxable years and wage statement from your employer for the last three (3) weeks.

*NOTE: Attach separate sheets for subparts A, B and C for current spouse(s), roommate(s) or other(s) residing in the home.*

	HUSBAND	WIFE
A. GROSS WEEKLY INCOME from:		
1. Salary and wages including commissions, bonuses, allowances and overtime, payable _____ (pay period) Note: If paid monthly, determine weekly income by dividing monthly income by 4.3	_____	_____
2. Business/Self Employment Income before expenses	_____	_____
3. Commissions, Bonuses, Tips	_____	_____
4. Pensions and Retirement	_____	_____
5. Social Security	_____	_____
6. Disability, Unemployment, Worker's Comp.	_____	_____
7. Public Assistance (welfare, AFDC payments, etc.)	_____	_____
8. Food Stamps	_____	_____
9. Child support received for any child(ren) not born of the parties to this marriage	_____	_____
10. Dividends and interest	_____	_____
11. Rents/Royalties less ordinary & necessary expenses	_____	_____
12. All other sources (Specify) _____ _____ _____		
13. TOTAL GROSS WEEKLY INCOME	\$ _____	\$ _____

<b>B.</b>	<b>ITEMIZED WEEKLY DEDUCTIONS</b>	<u>HUSBAND</u>	<u>WIFE</u>
14.	Weekly court ordered child support for prior children	_____	_____
15.	Weekly legal duty child support for prior children	_____	_____
16.	Weekly health insurance premiums for children of this case only	_____	_____
17.	Weekly alimony/support/maintenances Paid to prior spouses (actual paid)	_____	_____
18.	1/2 Weekly Self-employment Tax	_____	_____
19.	Union dues	_____	_____
20.	Weekly available income (Line 13 less Lines 14-19)	_____	_____
21.	Work Related Child Care	_____	_____
22.	Extraordinary Health care Costs	_____	_____
23.	Extraordinary Educational Expenses	_____	_____
24.	TOTAL GROSS WEEKLY DEDUCTIONS \$	_____	\$ _____
<b>C.</b>	<b>WEEKLY DISPOSABLE INCOME</b> (Line 13 minus Line 24)	_____	_____

**D. OTHER EXPENSES**

State Incomes Taxes \_\_\_\_\_

Federal Income Taxes \_\_\_\_\_

Number of exemptions taken  
Husband: \_\_\_\_\_ Wife: \_\_\_\_\_

Social Security \_\_\_\_\_

Medical Insurance - other then for children  
(list all persons covered): \_\_\_\_\_

Coverage available for children:

Medical        (☐)  
Dental        (☐)  
Eye Care      (☐)  
Psychiatric    (☐)

Retirement or pension fund:

Mandatory    (☐)  
Optional      (☐) \_\_\_\_\_

Child support withheld from pay  
(not including this case) \_\_\_\_\_

Garnishments (itemize on separate sheet) \_\_\_\_\_

Credit Union debts \_\_\_\_\_

Savings:      Thrift plans            (☐)  
                  Credit Union Savings (☐)  
                  Bonds                    (☐)  
                  Other (specify)        (☐) \_\_\_\_\_

Other (Specify): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- E. **IN ALL CASES INVOLVING CHILD SUPPORT:** Prepare and attach an Indiana Child Support Guidelines Worksheet (with documentation verifying your income); or, supplement such a Worksheet within ten (10) days of the exchange of this Form.
- F. **SELECTED MONTHLY LIVING EXPENSES:** (Specify which party is the custodial parent and list name and relationship of each member of the household whose expenses are included).

	<u>HUSBAND</u>	<u>WIFE</u>
Rent or mortgage payments (residence)	_____	_____
Real property taxes (residence) if not included in mortgage payment	_____	_____
insurance (residence) if not included in mortgage payment	_____	_____
Utilities (including water, sewer, electricity, Gas, heat and garbage)	_____	_____
Telephone	_____	_____
Child Support not withheld from pay (not including this case)	_____	_____
Medical (not covered by insurance)	_____	_____
Dental (not covered by insurance)	_____	_____
Insurance (life, health, accident, liability, disability excluding payroll deducted and automobile)	_____	_____
School (including, if applicable, colleges, universities or trade schools)	_____	_____
Child care and pre-school	_____	_____
Transportation (other than automobile)	_____	_____
Auto payments	_____	_____



	<u>HUSBAND</u>	<u>WIFE</u>
- Auto Insurance (not included in auto payment)	_____	_____
Other (Specify):	_____	_____
MONTHLY TOTAL EXPENSES	_____	_____
AVERAGE WEEKLY EXPENSES (Divide total monthly expenses by 4.3)	_____	_____

*Note: Indicate which of the foregoing expenses are delinquent and the amount thereof*

**G. DEBTS AND OBLIGATIONS:** (Include credit union) Attach additional sheets as needed.

CREDITOR'S NAME	DATE PAYABLE	BALANCE	MONTHLY PAYMENT
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
TOTAL		_____	_____

ATTACH A COPY OF THE MOST RECENT STATEMENT FOR EACH DEBT.

*Note: Indicate any special circumstances, i.e., premarital debts, debts in arrears on the date of physical separation or date of filing and the amount or number of payments in arrears.*

List all property owned either individually or jointly. Indicate who holds or how title held: (H) Husband, (W) Wife, or (J) Jointly. WHERE SPACE IS INSUFFICIENT **FOR COMPLETE INFORMATION OR LISTING PLEASE ATTACH SEPARATE SCHEDULE.**

Ownership Balance(s) Owed	H/W/J	Value (Identify Creditors)
A. HOUSEHOLD FURNISHINGS (Value of furniture, appliances, and equipment, as a whole; that is, you need not itemize)		

B. SECURITIES  
(stocks, bonds, etc.)

[illegible]

D. CASH AND DEPOSIT ACCOUNTS (including banks; savings and loan associations; credit unions; thrift plans; mutual funds; certificates of deposit; savings and checking accounts; IRA's and annuities)

<u>Institution</u>	<u>Ownership Account No. H/W/J</u>	<u>Value</u>
-		
-		

E. LIFE INSURANCE

<u>Company/ Policy No.</u>	<u>Ownership H/W/J</u>	<u>Beneficiary</u>	<u>Face Amount</u>	<u>Type: Term, Whole Life Group</u>	<u>Cash Value/ Loan Amount</u>

F. RETIREMENT PLANS

<u>Name of Plan</u>	<u>Ownership H/W/J</u>	<u>Vested Yes/No</u>	<u>Monthly Benefit At Earliest Retirement Date</u>	<u>Present Value (if known)</u>

Attach documents from each plan verifying information. If not yet received, attach a copy of your written requests to the plan(s).

G. REAL ESTATE (attach separate sheet with the following information for each parcel).

Address \_\_\_\_\_ Type of Property \_\_\_\_\_

\_\_\_\_\_ Date of acquisition \_\_\_\_\_

Original cost \$ \_\_\_\_\_ Present value \$ \_\_\_\_\_

Cost of additions \$ \_\_\_\_\_ Basis for valuation (attach appraisal if  
Obtained):

Total costs \$ \_\_\_\_\_

Mtg. Balance \$ \_\_\_\_\_

Other liens \$ \_\_\_\_\_

Equity \$ \_\_\_\_\_

Monthly payment \$ \_\_\_\_\_ To whom paid \_\_\_\_\_

Taxes (if not included in payment) \$ \_\_\_\_\_ Insurance (if not included in payment) \$ \_\_\_\_\_

Special Assessments \_\_\_\_\_

Individual contributions to real estate (for example, inheritance, pre-marital assets, personal loans)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

H. BUSINESS OR PROFESSIONAL INTERESTS  
(indicate name, share, type of business, value less indebtedness)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- I. OTHER ASSETS (that is, specify coin, stamp or gun collections or other items of unusual value).  
Use additional sheets as needed.

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- J. ATTACH ALL AVAILABLE DOCUMENTATION TO VERIFY VALUES.

### **PART III. ARREARAGE COMPUTATION**

If there is alleged the existence of a support or other arrearage, attach all records or other exhibits regarding payment history and compute the arrearage as of the date of filing of the petition or motion which raises that issue.

**PART IV. VERIFICATION**

I declare, under the penalties of perjury, that the foregoing, including any valuations and attachments is true and correct and that I have made a complete and absolute disclosure of all of my assets and liabilities. Furthermore, I understand that if, in the future, it is proven to this court that I have intentionally failed to disclose any asset or liability, I may lose the asset and may be required to pay the liability. Finally, I acknowledge that sanctions may be imposed against me, including reasonable attorney's fees and expenses incurred in the investigation, preparation and prosecution of any claim or action that proves my failure to disclose assets or liabilities.

Date: \_\_\_\_\_

\_\_\_\_\_  
PARTY'S SIGNATURE

**PART V. ATTORNEY'S CERTIFICATION**

I have reviewed with my client the foregoing information, including any valuations and attachments, and sign this certificate consistent with my obligation under Trial Rule 11 of the Indiana Rules of Procedure.

Date: \_\_\_\_\_

\_\_\_\_\_  
ATTORNEY'S SIGNATURE  
Name

\_\_\_\_\_  
Indiana Attorney

Number: \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_  
Phone: \_\_\_\_\_

\_\_\_\_\_  
Fax: \_\_\_\_\_